It is emphatically the province and duty of the judicial department to say what the law is.”
John Marshall for the Court, Marbury v. Madison, 1 Cranch 137 (1804), at 177.

This course is designed to familiarize you, the dutiful student, with Supreme Court policy making in the form of the Court’s written opinions. The Supreme Court, the highest judicial institution in the United States, makes decisions that affect the lives of people all over the country. In this course, I hope to promote an understanding and appreciation of the profound influence the Supreme Court has on life as we know and love it today, as well as to convey the very political nature of this institution. All too often, we Americans subscribe to the myth which surrounds this highest of legal institutions, shrouding it in the “cult of the robe,” placing its justices above politics and above the “humanness” of humanity. However true that may be in theory, since the creation of the High Court was indeed a means to check popular control of government, it is not true in reality. Politics plays an everyday role in the functioning of the Supreme Court, evidenced by the occasional ruckus surrounding a Supreme Court nomination, or picketing outside the Court over an unpopular opinion, or political mobilization over a Constitutional amendment to overrule a Court decision. Politics is present on the Court, both in the outside forces that hope to influence it, and in the internally-held policy preferences of its justices. Even the Constitution is not without controversy, as it is an extremely vaguely written document, able to be convincingly construed in any number of ways. Hence the many conflicting opinions written by the justices themselves, charged to make sense of our forefathers’ legacy.

In this course, you will read many opinions written by these Supreme Court justices, both the majority opinions and the accompanying disagreements (dissents and concurrences). This task will seem daunting at first, almost like learning a foreign language, but by the end of the semester, you’ll be a pro!

REQUIRED TEXT

edition may be acceptable, but it is up to you to be sure you’re completing the correct reading assignments.)

ALSO REQUIRED

This course is completely online. This means that the entire course will be conducted over UWM’s D2L server. Obviously, then, you need to take any actions necessary to secure access to this website immediately. If you have any problems accessing the course site or any questions regarding the performance of D2L, you should contact the University Help Desk (229-4040) or try to answer your question yourself on line (http://www.uwm.edu/IMT/STS/helpdesk/faq/).

A CAVEAT: Professionalism and Online Courses

One note before addressing course requirements and required readings: you will be expected to behave professionally in this class. That is to say, you will be expected to complete assignments on time and to carefully and thoughtfully complete all required reading. You will actively participate in online discussions in a constructive and literate way. I will not tolerate students who do not put forth every effort. Late work will not be accepted nor will make-up quizzes be given unless there is a major and substantiated complication which prevents completion, of which I am aware immediately and prior to the scheduled quiz or due date of the assignment. The determination about whether or not it is “major and substantiated” will be made solely at the discretion of the instructor. I know all the excuses, so please do not test me. Do note that full documentation of illness or death in the family is necessary for extensions/make-ups. In addition, I require notification BEFORE the missed assignment/quiz unless that is impossible due to documented emergency. If you are having computer problems, you may notify me via telephone immediately and must have some documentation of the computer issue. Sincerely-held religious beliefs are exempt from the documentation policy, though I still require advance notification of absence/conflict with a religious observance.

Online courses are demanding, and much of student success can be attributed to keeping up with the coursework and doing all the reading, which requires much self-motivation. I do provide deadlines to help you stay current, but as we do not meet face-to-face, it may seem easier to put this course on the back-burner. You do so at your own peril. Remember, this is a 400-level, 3-credit course. As such, as much is expected of you online as is expected face-to-face, if not more. Keep up. Do the reading (and do it carefully). Take good notes and brief each case. It will pay off in the end.

ACADEMIC INTEGRITY

No form of academic dishonesty will be tolerated in this class. Anyone found guilty of cheating or plagiarism or of any other violation of academic integrity will be assigned an automatic grade of F IN THE COURSE and will be prosecuted to the fullest extent through University channels. Notes on plagiarism can be found here http://www.indiana.edu/~wts/pamphlets/plagiarism.shtml and here http://www.uwm.edu/Libraries/guides/style/plagiarism.html. UWM’s policy can be found here: http://www4.uwm.edu/acad_aff/policy/academicmisconduct.cfm. Be sure you know the definition
and know how to avoid it. I am absolutely serious about this policy. It is indeed plagiarism to copy the justices’ words without citation or attribution or to copy the summary of a decision found on any of the various websites that provide them. We will notice the plagiarism and you will fail the course. Consider this your ONLY warning.

SPECIAL NEEDS

Any students with special needs due to a physical or learning disability should see me as soon as possible. Every effort will be made to accommodate your needs.

OTHER UNIVERSITY POLICIES

Other University guidelines (including policies on sexual harassment, grade appeals, incompletes, and military call-ups) can be found here: http://www4.uwm.edu/secu/SyllabusLinks.pdf.

COURSE REQUIREMENTS AND GRADING

Evaluation in this course will include two quizzes. The format of the quizzes will be discussed in advance of them and review sheets will be provided. The quizzes will be timed and are to be taken on a specific day, ALONE, so plan ahead.

[15 points for quiz one; 20 points for quiz two]

In addition to these two quizzes, you will be expected to brief eight cases over the course of the semester. You will be placed in one of ten groups, each of which will be responsible for briefing a set of cases spaced throughout the term. All of the members must hand in a complete and unique brief (by midnight on the Saturday listed on the syllabus, via D2L – it will be considered late and hence not accepted (without documentation and notice, as discussed above) if dropped any time after that, so don’t forget!). Note that it is NOT acceptable to use the Court’s syllabus or another website that summarizes the case as part of your brief. Copying anything from any source (including Supreme Court opinions themselves) without attribution is plagiarism. (See above for the consequences of plagiarism.) The rest of the class will be also responsible for those cases briefed by other groups, and it is suggested that you brief them all yourself as a study tool. But everyone will have to at least consider every case via the commentaries, discussed below. After all briefs have been turned in and all commentary made, I will post my brief of the case for your use in studying. Grades will be given for each brief, but the Teaching Assistant will be more lenient in the beginning as you become accustomed to the skill. More guidance on briefing cases will be provided under Content and in the Notes for the second week of class.

[5 points each for 40 points total]

Finally, as a means by which to encourage discussion and measure careful reading in this online course, each student will be responsible for posting commentaries on weeks in which he or she is not responsible for a case brief. These commentaries will be in reaction to one of several discussion board questions posted to cover the material from the week and are due at midnight on Sundays. Students
are encouraged to react to one another’s commentaries as well, as part of your overall participation grade. More detail on these commentaries will be posted under Content. [4 points each for 20 points total]

**Participation constitutes the last 5% of the course grade.** This grade will result from my analysis of your overall contributions throughout the semester to the commentaries boards. [5 points]

**GRADING SCALE**

The grading scale is as follows*:

- 100 – 93   A
- 92 – 90    A-
- 89 – 88    B+
- 87 – 83    B
- 82 – 80    B-
- 79 – 78    C+
- 77 – 73    C
- 72 – 70    C-
- 69 – 68    D+
- 67 – 63    D
- 62 – 60    D-
- 59 – 0     F

* The instructor reserves the right to curve grades, should the need present itself.

**COURSE SCHEDULE**

As seen below, readings and cases are apportioned by weeks. Each week houses two “sets” of readings (cases or readings from the book) along with briefs to be written by specific groups. **All briefs are due on the Saturday following each week (by midnight).** All commentaries are due on **Sundays** (again, by midnight). These are firm deadlines as I’ve learned that without deadlines, online students just do not do well. I apologize if that takes away some of the flexibility of the online course experience, but I hope that you’ll understand and appreciate the structure. You are more than welcome to post briefs and/or commentaries before they are due. (Indeed, I would suggest that readings and briefs in Set I be done by Wednesdays.)

Some cases will be covered solely by me, as noted. For those, I will post a brief under Content, which will contain some analysis of the case in the “Free Space” portion. The first few sessions contain background information. Readings are noted and notes on those readings will be posted under Content to guide you through them and highlight important points.
Some of the cases on the syllabus are in your casebook, while others are not. For those that are not, I suggest you utilize LEXIS-NEXIS, which is available to you through the UWM Libraries Home Page (http://www.uwm.edu/Libraries/databases/) or FindLaw.com (http://www.findlaw.com/casecode/supreme.html). All briefing groups are expected to read the entire opinion including dissents and concurrences, not just the excerpted version found in the Epstein-Walker text. In addition, any direct quotes must be cited to the United States Reports, the official reporter of the U.S. Supreme Court. (LEXIS provides the U.S. Reports page number within the opinion after one asterisk; e.g., [*123] is page 123 in the U.S. Reports. FindLaw also provides the U.S. citation, in blue, bracketed hypertext.) Everyone else in the class should read at least the Epstein-Walker excerpt when available, and the majority opinion when not available, scanning the separate opinions to discern the justices’ reason for disagreement. Remember, you are responsible for all of these cases on the quizzes, and, on weeks where you do not brief a case, you will have to post a commentary on the cases covered. More detail on citing to the opinions is contained on the handout on briefing (under CONTENT).

Finally, note that there are entire sections of civil rights and civil liberties we will not be able to cover and so many cases that we won’t be able to read. We’re trying to cover the waterfront in civil rights and civil liberties here, but there is only so much we can do in one semester. Hopefully, you’ll find one of the special topics courses to be of interest sometime soon. (I have taught Obscenity and the First Amendment, Civil Liberties in Times of Crisis, Campaign Finance, and Law & Politics, all under POL SCI 471, usually online.)

With all that in mind, we have the following schedule for this term:

**WEEK ONE**

Set I

**Introduction to the Course; Introduction to the Supreme Court**

READ:  
Syllabus  
First set of Notes

Set II

**General Introduction to the Constitution of the United States and Supreme Court**  
Decision Making; Incorporation – Making the Bill of Rights Apply to the States

READ:  
The Constitution of the United States (Appendix 1 773-784)  
The Living Constitution (3-9)  
Chapter 1 (Understanding the Supreme Court)  
Chapter 3 (Incorporation of the Bill of Rights)

**COMMENTARIES: GROUPS 4-6**

**DUE BY MIDNIGHT ON SUNDAY, Jan 27**
WEEK TWO

Set I

The Judiciary: Institutional Powers and Constraints; Briefing Cases
READ:
Chapter 2 (The Judiciary: Institutional Powers and Constraints)
Briefing Cases (CONTENT on D2L)

Set II

The First Amendment – Freedom of Speech and Association
READ:
Approaching Civil Liberties (89-92); Chapter 5 (Freedom of Speech, Assembly, and Association)
CASES:


BRIEFS DUE BY MIDNIGHT ON SATURDAY, FEB 2

COMMENTARIES: GROUPS 7-10
DUE BY MIDNIGHT ON SUNDAY, FEB 3

WEEK THREE

Set I

Free Speech, cont.

PROFESSOR BENESH: Morse v. Frederick, 551 U.S. 393 (2007) Student Speech

Set II


BRIEFS DUE BY MIDNIGHT ON SATURDAY, Feb 9

COMMENTARIES: GROUPS 10, 1-3
DUE BY MIDNIGHT ON SUNDAY, Feb 10
WEEK FOUR
Set I

Speech, cont. and Obscenity

READ:
Chapter 7 (The Boundaries of Free Expression, pp. 327-343)

Set II

READ:
Chapter 8 (The First Amendment and the Internet)
GROUP 3: Miller v. California, 413 U.S. 15 (1973) Obscenity

BRIEFS DUE BY MIDNIGHT ON SATURDAY, Feb 16

COMMENTARIES: GROUPS 6-9
DUE BY MIDNIGHT ON SUNDAY, Feb 17

WEEK FIVE
Set I

Obscenity, cont. and Libel

READ:
Finish Chapter 7 (The Boundaries of Free Expression (Libel), pp. 327-343)

CASES:
GROUP 7: Near v. Minnesota, 283 U.S. 697 (1931) Libel


Set II

Libel, cont. and Free Press

READ:
Chapter 6 (Freedom of the Press)

CASES:

BRIEFS DUE BY MIDNIGHT ON SATURDAY, Feb 23

COMMENTARIES: GROUPS 2-5
DUE BY MIDNIGHT ON SUNDAY, Feb 24
WEEK SIX
Set I

Free Press, cont.

Set II

Privacy
READ:
Chapter 10 (The Right to Privacy)
CASES:
GROUP 5: Buck v. Bell, 274 U.S. 200 (1927) Involuntary sterilization
GROUP 6: Griswold v. Connecticut, 381 U.S. 479 (1965) Birth control
GROUP 7: Roe v. Wade 410 U.S. 113, (1973) Abortion (Note: Concurrences are attached to Doe v. Bolton, 410 U.S. 179 (1973) – You need to include them.)


BRIEFS DUE BY MIDNIGHT ON SATURDAY, Mar 2

COMMENTARIES: GROUPS 1, 8-10
DUE BY MIDNIGHT ON SUNDAY, Mar 3

WEEK SEVEN
Set I

Privacy, cont.

Set II

READ:
Chapter 4 (Religion: Exercise and Establishment)
CASES:

BRIEFS DUE BY MIDNIGHT ON SATURDAY, Mar 9
COMMENTARIES: GROUPS 5-7
DUE BY MIDNIGHT ON SUNDAY, Mar 10

WEEK EIGHT
Set I
Free Exercise, cont., Establishment
GROUP 7: Abington v. Schempp, 374 U.S. 203 (1963) Establishment (Bible Reading)

PROFESSOR BENESH: Lemon v. Kurtzman, 403 U.S. 602 (1971) and progeny

Set II
Establishment, cont.
GROUP 8: Van Orden v. Perry, 545 U.S. 677 (2005) Public displays

BRIEFS DUE BY MIDNIGHT ON SATURDAY, MAR 16

COMMENTARIES: GROUPS 2-4
DUE BY MIDNIGHT ON SUNDAY, Mar 17

WEEK NINE
NO CLASS – SPRING BREAK! (March 18-24)

WEEK TEN
Set I
QUIZ WEEK!!! TAKE QUIZ 1 BY MIDNIGHT ON Sunday, March 31
(Covers material through Lynch v. Donnelly)

Set II
Search and Seizure
READ:
The Criminal Justice System and Constitutional Rights pp. 459-463, Chapter 11 (Investigations and Evidence (Searches and Seizures), pp 464-492)
CASES:
BRIEFS DUE BY MIDNIGHT ON SATURDAY, March 30

COMMENTARIES: GROUPS 5-10, 1
DUE BY MIDNIGHT ON SUNDAY, March 31

WEEK ELEVEN
Set I

Search and Seizure, cont and Self-Incrimination

READ:
Continue with Chapter 11 (Investigations and Evidence (Arrests and the Fourth Amendment, Self-Incrimination, pp 492-539)

CASES:


Set II


BRIEFS DUE BY MIDNIGHT ON SATURDAY, April 6

COMMENTARIES: GROUPS 2-4
DUE BY MIDNIGHT ON SUNDAY, April 7

WEEK TWELVE
Set I

Attorneys, Trials and Punishments

READ:
Chapter 12 (Attorneys, Trials, and Punishments)

CASES:

Set II


BRIEFS DUE BY MIDNIGHT ON SATURDAY, April 13

COMMENTARIES: GROUPS 8-10, 1
DUE BY MIDNIGHT ON SUNDAY, April 14

WEEK THIRTEEN
Set I

Racial Discrimination
READ:
Civil Rights and the Constitution pp. 603-610, Chapter 13 (Discrimination (Race)): pp. 611-651
CASES:
GROUP 8: Plessy v. Ferguson, 163 U.S. 537 (1896) Separate but equal

Set II

BRIEFS DUE BY MIDNIGHT ON SATURDAY, April 20

COMMENTARIES: GROUPS 4-7
DUE BY MIDNIGHT ON SUNDAY, April 21

WEEK FOURTEEN
Set I

Racial Discrimination, cont. and Sex Discrimination
READ:
Chapter 13 (Discrimination (Sex)): pp. 652-678
CASES:
GROUP 5: Bradwell v. Illinois, 83 U.S. 130 (1873) Law practice
GROUP 6: Reed v. Reed, 404 U.S. 71 (1971) Estates

Set II
GROUP 7: Frontiero v. Richardson, 411 U.S. 677 (1973) Dependents

BRIEFS DUE BY MIDNIGHT ON SATURDAY, APRIL 27

COMMENTARIES: GROUPS 1-3, 10
DUE BY MIDNIGHT ON SUNDAY, APRIL 28
WEEK FIFTEEN

Set I


Set II

READ: Chapter 13 (Discrimination (Affirmative Action)): pp. 689-719
CASES:

Case I’ll cover: Fisher v. University of TX (2013) TBD

BRIEFS DUE BY MIDNIGHT ON SATURDAY, MAY 4

COMMENTARIES: GROUPS 7-9
DUE BY MIDNIGHT ON SUNDAY, MAY 5

WEEK SIXTEEN (SHORT WEEK!!)

Set I

READ: Chapter 14 (Voting and Representation)
CASES:

PROFESSOR BENESH: VRA Cases, TBD
BRIEFS DUE BY MIDNIGHT ON THURSDAY, MAY 9

COMMENTARIES: GROUPS 1-6
DUE BY MIDNIGHT ON THURSDAY, MAY 9

FINAL QUIZ DURING FINALS WEEK
TAKE QUIZ 2 BY MIDNIGHT ON Saturday, May 18