

POL SCI 417: THE SUPREME COURT

Fall 2014

Wednesdays, 4 – 6:40p, ROOM CHANGE: BOLTON B83

Professor Sara C. Benesh

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Office Hours: MW 11-Noon & by appointment

NOTE: We'll use a D2L site for this course – do everything necessary to gain access to it, and visit it soon!
(<https://uwm.courses.wisconsin.edu/>)

COURSE DESCRIPTION

This is an advanced seminar on the Supreme Court of the United States of America. We'll intensively study the institution and its membership, and will simulate all of the processes undertaken at the Court. We will consider the role of the Court in society; the current and past membership of the Court and judicial selection; the legal system and how cases arrive at the Court; how the justices choose the cases they wish to hear (and why they have that power); how the justices make their decisions; the opinion-writing process; the role of clerks in the Court's process; and the impact of the Court as an institutional of American government. In order to more fully understand the different stages of decision making on the Court and in order to introduce you to the methods of legal research (as well as work on oral and written communications skills), we will also simulate the Supreme Court's process. We will simulate the certiorari process (deciding to decide), the writing and submission of legal briefs (using legal research), the oral argument process (attorney pleas for a particular decision and justice questioning of attorneys), the conference process (discussing who wins and who loses and why), and the opinion-writing process (conducting legal research and drafting majority and minority opinions). Because of these simulations, student participation and attendance are crucial and so are both required and included in your grade.

REQUIRED TEXTS

The following books are required for the course and are available in the University bookstore:

Baum, Lawrence. 2013. *The Supreme Court*. Eleventh Edition. Washington, DC: CQ Press.

Toobin, Jeffrey. 2013. *The Oath: The Obama White House and the Supreme Court*. New York: Anchor Books.

OTHER REQUIRED READING

Other articles and book chapters will be made available via D2L.

A CAVEAT

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 arrive on time and to attend all meetings. You will be prepared for each class and actively participate in discussion. I will not tolerate disruptive behavior, including, but not limited to, reading newspapers, conversing during lectures, insulting classmates or the instructor, leaving early, or eating dinner (though I know we're going late!). I also will not tolerate students who do not put forth every effort. Late work will not be accepted nor will make-up exams be given unless there is a major and substantiated complication which prevents completion, of which I am made aware immediately and **prior** to the scheduled presentation or due date of the assignment. The determination about

whether or not it is a “major and substantiated” excuse 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 excused absences and extensions/make-ups.

To repeat, I require notification BEFORE the missed assignment/exam unless that is impossible due to documented emergency. Sincerely-held religious beliefs are exempt from the documentation policy, though I still require advance notification of absence/conflict with a religious observance. (See http://www.uwm.edu/Dept/SecU/acad%2Badmin_policies/S1.5.htm for UWM’s policy on accommodation.)

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.

I have linked to a **plagiarism test on the front page of our D2L site** that you must complete before turning in any assignments or viewing any other material beyond this course syllabus. The folks at the Indiana University School of Education have put together an excellent tutorial on plagiarism along with a test (labeled *New and improved test* on their website, which is at <https://www.indiana.edu/~istd/index.html>) and we’ll use it to ensure knowledge of plagiarism and how to avoid it. Once you complete the test successfully, you should SAVE the certificate that you earn (as a pdf or txt or jpeg file), and turn it into the Dropbox on D2L. You can try the test without the tutorial, but I’d suggest going through the tutorial before trying the test. You need to get 8/10 to get the certificate.

I am absolutely serious about this policy. Take pride in your work and do it yourself. I 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. See www.sac.uwm.edu for more information.

OTHER UNIVERSITY POLICIES

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

GRADING

The course grade will be determined by the student’s performance on two exams, two legal research exercises, the simulations, and class participation.

Legal Research Exercises:	5%
Midterm:	15%
Final:	20%
Certiorari exercise:	15%

Oral arguments exercise:	15%
Decision making exercise:	20%
Participation:	10%

Each component is briefly detailed below with more information forthcoming. The Grading Scale I use is the standard one:

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

LEGAL RESEARCH EXERCISES

We will complete two research exercises, each worth 2.5% of your grade. We'll go over the first one in great detail in class – you'll just need to then go carry it out at home or in a campus computer lab. The second will be more independent. Given the importance of legal research to this course and given past course evaluations that stressed a need for more guidance on the process of research, you should approach these as valuable learning experiences. If you turn in the completed assignments and demonstrate every effort in each, you will obtain full credit on them. More information on these assignments will be available soon, via D2L.

THE EXAMS

The exams will be essay in nature, with some identifications (I give you a term, and you explain what it is and how it relates). The first is worth less than the second so that you might obtain an understanding of the sorts of questions I ask in the first and not be penalized as much for doing poorly there. I also greatly encourage progress and if you improve, you will be rewarded. In order to allow for and reward that improvement, the final **IS CUMULATIVE**.

CERTIORARI EXERCISE

As noted in the introduction, we will conduct a simulation of the certiorari decision stage, acting as attorneys, interest groups, clerks and justices. Students will prepare cert petitions or amicus briefs as to cert as attorneys; cert pool memos as a clerk to a justice; and then will vote on the disposition of cert petitions as a particular justice. All of these activities will be done using actual cases pending acceptance or decision by the U.S. Supreme Court. While the cert component has one oral component (wherein justices will vote on cert petitions), the grade is mostly based on written materials including those listed above. All students will write either a petition or an amicus brief, all students will write a cert pool memo, and all students will act as a justice in voting on certiorari. More information on the certiorari exercise will be available on D2L.

ORAL ARGUMENTS EXERCISE

The second simulation is of the oral arguments process wherein those students acting as attorneys and amici will argue their cases to the Court and those acting as Justices will interrupt attorneys with questions. Hence, the oral arguments grade is a grade based on preparation, role play, and oral presentation. More information on the oral argument exercise will be available on D2L.

DECISION MAKING EXERCISE

The final simulation exercise is designed to illustrate the process through which Supreme Court decisions are made. Students will act as justices engaging in conference deliberations and opinion writing. Given that justices are unlikely to make decisions without the written arguments of the attorneys, legal briefs and amicus briefs on the merits are also counted under this exercise. Hence, some students will write opinions as justices, others will write legal briefs on the merits as attorneys, and still others will write briefs amicus curiae as an assigned interest group. More information on the decision making exercise will be available on D2L.

PARTICIPATION

The participation grade will be based on class attendance and participation as well as performance on the simulations.

COURSE SCHEDULE

This schedule is tentative, and the instructor reserves the right to make changes as needed. Students are expected to read the assigned material prior to the class period during which the material will be discussed.

WEDNESDAY, SEPTEMBER 3: **WELCOME!**

WEDNESDAY, SEPTEMBER 10: **THE COURT & THE JUSTICES**

Baum, Chapters 1 & 2

WEDNESDAY, SEPTEMBER 17: **SELECTION AND CONFIRMATION**

Readings on Supreme Court confirmation (D2L)

View portions of Kagan confirmation hearings in class

DISCUSS CERT SIMULATION AND ASSIGN ROLES

WEDNESDAY, SEPTEMBER 24: **LEGAL RESEARCH**

D2L LEGAL RESEARCH

LEGAL EXERCISE #1 DUE, by midnight

WEDNESDAY, OCTOBER 1: **THE CURRENT JUSTICES**

Toobin book, ALL

WEDNESDAY, OCTOBER 8: **THE JUSTICES, CONT**

D2L Reading

LEGAL EXERCISE #2 DUE, by midnight

WEDNESDAY, OCTOBER 15: **THE CASES**

Baum, Chapter 3

D2L Reading: Sample Case, writ for certiorari

Readings on clerks (D2L)

Reading on amici at cert (D2L)

**ATTORNEY PETITIONS FOR CERT DUE
BRIEFS AMICUS CURIAE DUE**

WEDNESDAY, OCTOBER 22: **THE CASES**

Readings on Attorney participation (D2L)
Sample Cert Pool Memo (D2L)
Discussion: The OT 2014 Docket
D2L Reading on Current Cases
Read Colleagues' Attorney Writs and Amicus Briefs (D2L)
CERT POOL MEMOS DUE

WEDNESDAY, OCTOBER 29: **CERTIORARI SIMULATION & MIDTERM
EXAMINATION**

Come to class prepared to vote on cert, AS YOUR JUSTICE. THEN, MIDTERM.

WEDNESDAY, NOVEMBER 5: **DECISION MAKING**

Baum, Chapter 4
Readings on Opinion Writing (D2L)
Petitioner Brief in Sample Case (D2L)
Reply Brief in Sample Case (D2L)
Listen to arguments in class (Transcript available on D2L)
DISCUSS ORAL ARGUMENTS SIMULATION, ASSIGN ROLES

WEDNESDAY, NOVEMBER 12: **ORAL ARGUMENTS & AMICUS CURIAE**

Readings on Oral Arguments (D2L)
Briefs Amicus Curiae in Sample Case (D2L)
Readings on influence of amici on the merits (D2L)

WEDNESDAY, NOVEMBER 19: **OPINIONS IN SAMPLE CASE & THE CONFERENCE**

Get opinions via LEXIS:
Majority
Dissents
Readings on Conference (D2L)
Readings on Opinion Assignment (D2L)

WEDNESDAY, NOVEMBER 26: **HAPPY THANKSGIVING!**

WEDNESDAY, DECEMBER 3: **ORAL ARGUMENTS SIMULATION & CONFERENCE
SIMULATION**

WEDNESDAY, DECEMBER 10: **POLICY OUTPUTS, IMPACT & POWER**

Baum, Chapters 5 & 6
Additional impact reading (D2L Readings)
Legitimacy as Power (D2L readings)
The Separation of Powers (D2L readings)
Review for Final
Questions on Papers

BRIEFS AND OPINIONS DUE BY MIDNIGHT TO D2L!

FINAL EXAM: TUESDAY, DECEMBER 16, 3-5PM.