political science 121a -- spring 2001
constitutional law: the supreme court
http://www.sjsu.edu/faculty/brent/121a/homepage.html

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office hours:
Tuesdays 10:00 – 12:00
Wednesdays 12:00 – 1:00
Wednesdays 5:00 – 6:00

This course is designed to introduce students to basic concepts in American Constitutional Law as they apply to institutional powers and economic regulation. By the end of the semester, students should acquire:

1) the ability to read and brief Supreme Court opinions
2) the ability to conduct legal research
3) an understanding of the history and nature of judicial review
4) an understanding of the differing philosophies regarding the use of judicial review;
5) knowledge of external and internal constraints on the Court's use of judicial review;
6) knowledge of the leading Supreme Court cases as they pertain to judicial, legislative, presidential and bureaucratic power
7) knowledge of the leading Supreme Court cases as they pertain to federalism
8) an understanding of the interplay between law and politics in the Court's opinions
9) the ability to synthesize the preceding into written and oral arguments

A Note on the Use of the Internet -- This course has a site on the Internet. The address is listed at the beginning of this syllabus. Students are encouraged to find this site and bookmark it on their web browsers. The Internet site contains everything in this syllabus and more. Through the Internet site, you will:
   a) be able to access your course grade
   b) receive class news
   c) find interactive study guides for the exams
   d) take computer-scored practice quizzes
   e) be able to engage in on-line discussions with your classmates
   g) find pictures of the members of the Supreme Court
   h) find links to other Internet sites that will be useful or interesting

As a student, you are not required to use this site. It is designed to complement, rather than replace, the traditional elements of this course. For example, you will never be responsible on an exam for information on the site or any of its links. However, having access to the Internet will be extremely beneficial, particularly when it comes time to perform your legal research.
Textbooks


In addition, all students must purchase a packet of readings from the A.S. Print Shop.

Your Grade

Your grade in this course will be determined by three homework assignments, three examinations, two Supreme Court simulation term papers, and class participation.

**Homework Assignments** -- Three times during the course of the semester you will be asked to brief a Supreme Court case or cases. Briefing a case will be explained in class. Essentially, briefing a case requires you to identify the facts, the legal issues, the decision, and the significance of that case. These assignments should be typewritten, and will be graded on their completeness and the depth of understanding demonstrated. Furthermore, one time during the semester, you will be asked to lead the class discussion about a particular case that you have briefed.

**Examinations** -- The three examinations will consist exclusively of essay questions -- there are no multiple choice questions in this course. In a sense, the final is cumulative. Makeup exams will only be administered to students with written documentation of an acceptable excuse, and may be designed to be more difficult than the exam administered in class. For additional information on my make-up exam policy, check the website.

**Supreme Court Simulation/Term Papers** -- The Supreme Court simulation/term paper is described more fully at the end of this syllabus.

**Participation and Reading** -- All students will be expected to participate orally in class. For the most part, this class will be taught using the Socratic method. The Socratic method dispenses with the traditional lecture and places greater responsibility on the students. The classes will focus very closely on the reading assigned each day. I will not tell you what the reading is about -- instead, you will tell me what the reading is about. All students must have the assigned reading completed and should be prepared to discuss it in every class. I will call upon every student to participate. Participation ought not be taken lightly. It constitutes 15% of your grade, and if you earn no participation points, your final grade will be one and one-half full letter grades lower than it would have been if you had participated regularly. I do not take attendance, but if you do not attend regularly, you will be unable to participate and will thus lower your grade.
I realize that many students are uncomfortable with participating in class. If you are one of those students, I have two suggestions:

1) Make sure you do the reading on a regular basis. The class discussion will be focused on the reading assignments. Even if you have trouble understanding some of the more complex portions of the assigned readings, you should be able to answer some of the questions I ask if you have done the reading carefully.

2) If you volunteer on a regular basis, I will not ask you to speak when you don’t volunteer. You should do the readings on a regular basis. However, I fully realize that there are occasions when you simply won’t have time to finish the reading. Therefore, I would urge you to voluntarily participate on those days when you have done the reading, because if you do so, I will refrain from calling upon you on those days when you do not volunteer.

3) If you are confused or have nothing to say, ask for my help. Some students find the material in this course difficult to comprehend, and therefore they find participation to be difficult. If you are one of these students, don’t just sit there and continue to be confused – ask me for help. I assume that you are enrolled in this course to learn. My job is to assist you in your learning.

The breakdown of your grade is as follows:

<table>
<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Case Briefs</td>
<td>15%</td>
</tr>
<tr>
<td>Midterm #1 (Wed. February 21)</td>
<td>10%</td>
</tr>
<tr>
<td>Midterm #2 (Wed. March 21)</td>
<td>15%</td>
</tr>
<tr>
<td>Final Exam (May 23, 9:45 a.m.)</td>
<td>20%</td>
</tr>
<tr>
<td>Supreme Court Simulation Paper #1 (due April 18)</td>
<td>10%</td>
</tr>
<tr>
<td>Supreme Court Simulation Paper #2 (due May 9)</td>
<td>15%</td>
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<tr>
<td>Participation</td>
<td>15%</td>
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</tbody>
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Incompletes: Any student who has not completed all assignments by the day of the final exam MUST obtain a form entitled "Request for an Incomplete" from me and must submit it to me by May 23. This form may be obtained from the Department of Political Science or it may be downloaded off the course website. Any student who fails to do this will receive an "F" in this course, in accordance with university policy. (That "F" can be raised to the appropriate grade when the coursework is completed, but you don't want an "F" on your transcript even temporarily.)

Office Hours: The office hours listed at the beginning of this syllabus are not meant to be exhaustive. We can arrange to meet at other times at our mutual convenience. If you have any concerns about any aspect of the course, or about university life or your future in general, please do not hesitate to discuss them with me. I urge to take advantage of this offer – the material in this course is rather demanding, and I am more than happy to take the time to help you learn it.
Anonymity: I like to grade all assignments anonymously. On all tests and assignments, I would like you to omit your name and include only your social security number. I will not accept assignments with names on them.

Attendance -- I do not take attendance in this course. However, participation is an element of your grade, and you cannot participate if you do not attend. Therefore, excessive absences will have a detrimental effect on your participation grade.

My Expectations

Despite the fact that you have been assigned 500 pages of reading for the entire semester, some students find this course demanding. This course is only demanding in the sense that I will expect you to know the material thoroughly. You only need to do a few basic things to make sure that you get a good grade.

1) Attend class.
2) If you miss class, get the notes.
3) Do the reading.
4) Participate.
5) Put some effort into your paper. If you’re having trouble, ask me for help.
6) Make sure you understand everything. If you don’t, ask me for help.
7) If you get a bad grade on the first exam, ask me for help.

The number of pages of reading that is assigned is not very large (about 500). However, it can be somewhat difficult because most of it is written in a legalistic fashion. If you do not understand something, ask me for help, either during class or in my office. Most of the students who received bad grades from me never asked for my help -- they just continued to get more and more lost as the semester rolled on and never did anything about it. I am here to help you learn, and I am willing to work with you. Please take advantage of it.

PLEASE NOTE: Any student who gets a “D” or an “F” on the either of the first two exams MUST spend one half-hour in my office with me before the next exam. Any student who fails to meet this commitment will have 10 points deducted from his or her grade on the next exam.
Course Topics and Readings

I. Supreme Court Procedures -- Ducat, pp. 28 - 38; van Geel, pp. 8-10

II. How to Read a Supreme Court Opinion
   A. Types and Parts of Opinions -- van Geel, pp. 10-15
   B. Constraints on Supreme Court opinions -- van Geel, Chapter 3
   C. The Use of Precedent -- van Geel, Chapter 6
   D. How to Brief a Case -- van Geel pp. 141-143

III. Judicial Power
   A. Judicial Review -- Ducat, pp. 1 – 38; Packet Section 1
   B. Jurisdiction and Justiciability -- Ducat, pp. 39 – 78;

IV. Modes of Constitutional Interpretation – Packet, Section 2; van Geel Chapter 4

V. Federalism
   A. Congress and the Commerce Clause -- Ducat, pp. 270 – 303
   Ducat, pp. 337 – 344
   Ducat, pp. 390 -- 398; Packet Section 3
   Ducat, pp. 96 -- 100

VI. Congressional Power
   A. Constitutional Basis -- Ducat, pp. 79 – 96 and 100 – 105
   B. Delegation of Legislative Power -- Ducat pp. 105 -- 132
   C. Investigative Powers -- Ducat, pp. 132 -- 155
   D. Term Limits – Packet, Section 4

VII. Presidential Power
   A. Constitutional Basis – Ducat pp. 178 -- 210
   B. Appointment and Removal Powers -- Ducat, pp. 159 -- 178
   C. Executive Privilege & Immunity-- Ducat, pp. 210 -- 246; Packet Section 5
   D. Powers over the Military and Foreign Affairs -- Ducat, pp. 247 – 269
Supreme Court Simulation and Term Paper Assignment

In order to better understand both the law and the process the Supreme Court adopts when writing constitutional decisions, all students will participate in a simulation of the United States Supreme Court. When the Court decides a case, it hears oral argument from attorneys on both sides of the controversy and then collectively writes the majority opinion and any concurring or dissenting opinions. We will recreate these rituals in class, utilizing two actual to which the Court has already granted certiorari for the 2000-2001 term. In this simulation, each student will assume one of two roles -- either an attorney arguing a case before the Court, or a justice on the Court itself. The requirements for the two roles vary. Please read the following descriptions and think about which role you would prefer to play.

The Roles

Attorneys -- Attorneys stand before the Court and orally present and defend the position of their clients. Students who assume this role will have three responsibilities:

a) to submit a legal brief (approximately 2 pages) to the Court 1 week before oral argument. This brief should be distributed through the course web site.
b) to engage in oral argument before the Court for 20 minutes
c) to submit a 10-20 page research paper to the instructor

NOTE: Students who assume this role should not be shy about making public presentations, since they will be in the spotlight for 20 minutes.

Supreme Court Justices -- Supreme Court justices are expected to think about their assigned case before oral argument. Their formal responsibilities are as follows:

a) to participate actively in oral argument
b) to negotiate with other members of the Court after oral argument, both in class and using the electronic bulletin board on the course web site
c) to submit two written opinions

The Cases

The actual cases that will be decided by you are:

University of Alabama v. Garrett 193 F.3d 1214 – In 1991, Congress passed the Americans with Disabilities Act. This act prohibits discrimination against the disabled in many areas, including employment, and permits disabled victims of discrimination to sue their employers. Currently, all employees are covered under the Act, including employees who work for state governments. In this case, the state of Alabama is attempting to have the Act declared unconstitutional as it applies to employees of state governments, thereby depriving state employees from using the Act to sue their employer. The Supreme Court heard oral argument in this case on October 11, 2000.
Alexander v. Sandoval (139 F.3d 1426) – Title VI of the federal Civil Rights Act of 1964 prohibits discrimination on the basis of race and national origin by state agencies that receive federal funds. In 1990, the Alabama state legislature amended the state constitution to declare English as the state’s official language. In response to this change, the state began administering written exams for drivers’ licenses in English only. Martha Sandoval is not fluent in English, and filed a class-action lawsuit against the state. This case raises many issues, but you will be asked to focus primarily on the federalism aspect. This Supreme Court heard oral argument in this case on January 16, 2001. Further information about this case can be found at http://www.englishfirst.org/alabama.htm

The Papers

The Justices' Term Papers (Opinions) -- The number of papers that I will receive from the justices depends totally upon the way the justices decide to vote. For either of the two cases, the justices might be unanimous (resulting in only one paper submitted to me) or they might be wildly split (resulting in every justice submitting a separate paper). Justices have the option of writing one of three types of opinions: they can join the majority opinion, or write a concurring or dissenting opinion. The choice is totally up to you, depending on how you're voting and the arguments that you feel are persuasive. After the initial vote is taken on the day of oral argument, justices must begin writing their opinions and circulating them with other justices. Negotiation is not only encouraged, it is required! I will set aside certain class days for "conferencing" with the other justices on your court. If some justices decide that they want to form a coalition and produce a single opinion between them, that is fine!

Oral argument will be held on Wednesday, April 4. On April 9, the justices will meet for an in-class conference to discuss their views on the case. After that discussion, all justices must begin writing their own opinions in the case. These papers are due on April 18, and constitute 10% of your overall grade in the course. After the papers are submitted, I will post them all on the university's COW system for comments and criticism from other justices, just like the real Supreme Court. If they choose, students may then join together with other students who have voted the same way as themselves, and they may work jointly to produce a final opinion, which is due on May 9.

The Attorneys' Term Papers (Briefs) -- attorneys will submit individual papers that are due on the same date as the justices' papers (May 9).

Grading

Papers will be graded primarily on the strength of the argument presented. The best papers will demonstrate significant legal research and an ability to apply the extant case law to the topic at hand. Papers should be logically structured and comprehensive, and the best papers will demonstrate imagination, creativity, and extensive research. In addition, papers should utilize proper forms of legal citation (to be discussed in class). Finally, points will be deducted for spelling and grammatical errors. Papers that do little more than the minimum required will receive lower grades than papers that demonstrate more effort and thought.
Attorneys -- Eighty percent of the attorneys' grades will be determined by their research papers (10-20 pages), and 20% will be determined by their performances at oral argument. However, because the attorney's role is the most demanding, all attorneys shall receive a 5-point bonus added to their final grade.

Justices -- Justices' grades will depend wholly upon the papers they submit. However, because Paper #2 can have more than one author, two caveats are noted:

1) Page Length -- the minimum length of the paper increases as the number of authors increases. A paper written by one person must be a minimum of 10 pages long. For each additional author, the opinion must be an additional 5 pages long. As an example, if a page has six authors, it must be 35 pages long.

2) Peer Review -- If you choose to author an opinion with one or more other students, your grade will depend in part on their evaluation of your contribution to the finished product. Specific details will be given in class.

Attendance

Attendance is MANDATORY on April 4, the day on which we will conduct oral argument. If you have an unexcused absence on that day that you are scheduled to perform your assigned role, you will receive a failing grade for this portion of the course. I will only permit exceptions from this policy to students who contact me ahead of time and who have written documentation of an acceptable excuse.