

GEORGE MASON UNIVERSITY SCHOOL OF LAW
SUPREME COURT CLINIC
Law 185

Spring Semester 2023

Adjunct Professors Consovoy, McCarthy, Bates
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COURSE INFORMATION

- Pre-Requisite:** Connotational Law I: Structure of Government (Law 121)
- Class Meetings:** Class will be held through a variety of formats, including professor lectures, guest speakers, smaller group meetings, and trips to the Supreme Court (tentative based on the Court's Covid-19 protocols). Below is a tentative schedule with reading assignments, but additional classes, assignments, and events will be added throughout the year.
- Course Book:** There is no assigned textbook. We will assign chapters and sections of Stern & Gressman: Supreme Court Practice (9th ed.) (available on Bloomberg; to be provided in PDF), the definitive guide on practicing before the Supreme Court. We also will have other reading assignments, such as articles and briefs we use as exemplars of the clinic's product.
- Class Structure:** We will assign readings that we expect you to discuss in class. Most of our readings will cover the logistics, procedure, and strategy of practicing before the Supreme Court. Generally speaking, the first half of class will be dedicated to discussing the clinic's projects, and the second half of class will be devoted to discussing the assigned readings.
- Requirements:** Students will have several opportunities for performance. Each student is expected to work on at least two briefs over the course of the year, preferably one each semester. Under the supervision of the professors, students will research, draft, receive feedback, edit, and prepare briefs for filing. After each filing, the students and professors will debrief about the final work product, during which time the professors will offer feedback and the students will self-evaluate their research and writing. We usually assign three students to each brief. When we find a new matter, we will circulate an email to the class requesting volunteers for that matter. If no one volunteers, we will assign the brief according to relative contributions to date.

We also have two weekly tasks for you to complete. The first is an update of cases where the Supreme Court has called for a response to a petition

for writ of certiorari. The second is a circuit report where each student monitors a circuit's new opinions, on a weekly basis, for potential cases upon which the clinic could contribute. Students are responsible for preparing short memos about relevant cases and should be prepared to discuss them with the professors and other students in class. The professors may follow up with additional short research questions.

Grades:

Student grades will be based primarily on student writing assignments completed on behalf of the clinic. In particular, approximately 50% of a student's grade will be based on the student's work preparing and drafting legal documents filed on behalf of the clinic such as petitions for certiorari and cert- and merits-stage amicus briefs. The other 50% of student grades will be based on the student's weekly written reports. In-class discussion and participation also are important. A student's overall grade based on their writing/monitoring assignments may be adjusted one step upward or downward (for example, from an A up to an A+ or down to an A-) based on the student's participation during in-class discussions. Class attendance is critical. In compliance with George Mason's attendance policy, students absent from 20 percent or more of classes may not receive credit for the course.

Learning Outcomes: By the end of the course, students should have acquired an understanding of the nuts and bolts of Supreme Court practice and the ability to draft an effective brief.

SYLLABUS/CALENDAR OF EVENTS

(Additional Classes, Assignments, and Events Will Be Added Later)

Date	Event (Topic)	Reading Assignment
January 25	The Merits Brief	<ul style="list-style-type: none"> • S&G: 13 (Intro on page 714), 13.7, 13.9-13.11(G), 13.12, 13.12(A) • Petitioner's Brief in <i>Shelby County v. Holder</i>, 2012 WL 6755130
February 8	Oral Argument (the role of oral argument as opposed to advocacy via the briefs; oral argument strategy; preparing for oral argument)	<ul style="list-style-type: none"> • S&G: Sections 14.1, 14.3-14.4, 14.7, 14.13-15 • <i>SFFA v. Harvard</i> Oral Argument, https://www.supremecourt.gov/oral_arguments/audio/2022/20-1199 • <i>Minnesota Voters Alliance v. Mansky</i> Oral Argument, https://www.supremecourt.gov/oral_arg

		uments/audio/2017/16-1435
February 22	The Supreme Court's Non-Certiorari Jurisdiction	<ul style="list-style-type: none"> • S&G Appellate Jurisdiction Sections: 2.III.7, 2.IV.9, 2.IV.10(A) - (B), 2.IV.10(D)(4), 4.II.27, 4.II.27(A)-(B), • S&G Original Jurisdiction Sections: 10.I.1-2, 4, 10.I.6
March 8	How the Supreme Court Decides Cases	<ul style="list-style-type: none"> • S&G Sections: 6.XIII.25 (questions presented); 4.II.28-29 (appeals) • Justin Pidot, <i>Tie Votes in the Supreme Court</i> at pp. 2-11 • The Court & Constitutional Interpretation, https://www.supremecourt.gov/about/constitutional.aspx • The Court & Its Procedures, https://www.supremecourt.gov/about/procedures.aspx • The Court as an Institution, https://www.supremecourt.gov/about/institution.aspx
March 22	Supreme Court in Private Practice: How to Acquire Work and Practice Before the Supreme Court	(Guest Speaker)
April 5	Non-Merits Dispositions (GVRs, DIGs, summary reversals, stays, habeas corpus, etc.)	<ul style="list-style-type: none"> • S&G: Sections 5.I.12 (GVRs & Other Summary Dispositions); 5.I.15 (DIGs); 15.II.18-19 (summary affirmance/dismissal/reversal); 17.I.1 (stays); 17.III.21 (habeas corpus); 18.1-18.2 (death penalty)
April 19	The Role of Law Clerks	<ul style="list-style-type: none"> • David R. Stras, <i>Keynote Address: Secret Agents: Using Law Clerks Effectively</i>,

		98 MARQUETTE L. REV. 151-80 (2014) (Guest Speaker)
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