

SUPREME COURT SIMULATION SEMINAR FALL 2018 // Visiting Professor Glenn Smith

BASIC INFORMATION

When Class Meets: Wednesdays, 5 P.M. - 7:50 P.M., in Room HSS 2305B

Departures from Usual Schedule: There is no class on Wednesday, November 21 (Thanksgiving Eve)

Scheduled Final Exam: There is NONE!

Required Reading:

1. Lawrence Baum, THE SUPREME COURT (13th Ed. 2018 CQ Press, Inc.) [NOTE: The 13th Edition is not significantly different from the most recent past edition (the 12th Edition), and if the 13th Edition remains unavailable due to just being published, we will use the 12th Edition instead.]

2. Periodic supplements distributed in class or via the TED page. A few of these supplements may be prepared by me. Most will be prepared by students in the class, who will post these documents for class downloading or copy them in sufficient numbers to hand out to other class members.

CANCELLED CLASS ON Wednesday, November 21st; Assignment in Lieu of Cancelled Class

Due to the Thanksgiving holiday, we will not have a live class session on Thanksgiving eve, November 21st. In lieu of that class, you will listen to (or read the transcript of) an oral argument in a current case and write a short evaluative memo on it based on several prompts.

PROFESSOR'S KEY CLASS GOALS & IMPORTANT BY-PRODUCTS

By engaging fully in the work of the course, you will realize a number of learning opportunities. Specifically, your full engagement will enable you to:

1. Develop a deeper appreciation of the institutional dynamics, methods and difficulties of public-law adjudication at the Supreme Court level -- including the critical roles played by lawyers, judicial clerks, and individual Justices.
2. Refresh and expand your knowledge of major constitutional, statutory and regulatory law doctrines of current relevance.
3. Gain additional experience in oral advocacy, “thinking on your feet” (and asking clear and probing questions), and making clear and sophisticated educational presentations.
4. Enhance your interest in the Supreme Court and its cases -- and to enhance your ability to locate and understand information about the Court and its work.

B. Important By-Products: By participating in the course you also:

1. Complete several polished writing samples useful for career advancement and other purposes.
2. Become proficient in a broadly useful methodology for conceiving, researching, and efficiently and effectively producing a major written work product.

CLASS FORMAT

1. FIRST FOUR WEEKS: Introductory Orientation/Background Discussion of Supreme Court Procedures, Dynamics & Research The first 4 class sessions will orient you to the course and familiarize you with the structure, procedures and dynamics of the United States Supreme Court. A major focus of one of these class days will be research materials and methods relevant to Supreme Court advocacy and completing written assignments for the course.

Reading assignments for these classes will be made on a week-by-week basis.

2. NEXT FOUR or FIVE WEEKS: Simulations re: Four or Five Current Legal Controversies Now Pending in the Supreme Court: After four weeks of introductory orientation/coverage, class sessions will be devoted to argumentation about and discussion of four or five cases currently on appeal to the Supreme Court. Each currently pending case will be discussed during one class session in this manner:

--1st Hour-Plus on X v. Y: **Simulated Supreme Court Oral Argument** (& Post-Argument Class Discussion, as time permits)

--Class members will play roles as current Supreme Court Justices. (Depending upon class size, class members may be assigned on a rotating basis to play the roles of two justices who typically exhibit high rates of agreement. Or class members may be assigned to play roles as “recent past justices.”)

Justice simulators will base their participation in oral argument on prior research about the positions and general approach of their assigned Justices.

--Based on actual main briefs and lower-court opinions, one class member will represent the Petitioner's position, in an initial opening statement and in answers to questions from the "Justices." Another class member will represent the Respondent's position.

--Students not directly participating in the simulated oral argument will actively observe it, and complete a short observation questionnaire.

--The simulated oral argument will be audio-taped using the course podcast technology.

--Post-Break 2nd Portion of Class on X v. Y: Simulated Supreme Court Case Conference (& Post-Conference Class Discussion)

--Playing roles as the same Justices they simulated at the oral argument in the 1st class hour, after a 15-minute break class members will in order of justice seniority present their Justices' views on the legal issues and vote on how the case should be decided. The conference will also simulate the function of choosing who will write the initial draft of the majority opinion and dissenting opinions.

--Students not directly participating in the simulated case conference will actively observe it, and complete a short observation questionnaire.

--The simulated oral argument will be audio-taped using the course podcast technology.

--At the end of this class segment, one of your colleagues or I will lead an overview/discussion of the constitutional law issues posed by a future case to be discussed.

--Summary of Simulation Responsibilities of Each Class Member

Over the course of the trimester (depending upon the size of the ultimate class enrollment), you will do the following tasks in the frequency indicated:

--Argue a Pending Case (for either the Petitioner or the Respondent) OR lead an in-class “Argument Overview” -- 1 time

--Simulate a Supreme Court Justice (during the oral argument and case conference phases) -- 2 to 3 times, depending upon class size (simulating a different Justice/Justice duo each time)

3. REMAINING WRAP-UP WEEK?: Depending upon class size, we may have one remaining week to discuss overarching themes emerging from class discussion and the simulations and, perhaps, to discuss an additional major topic (e.g., reform of the nomination and confirmation process).

REQUIRED WRITTEN WORK

1. Materials Prepared by Students Playing Roles as Justices

(i) 4P Memoranda -- For TWO of the cases on which you simulate a Supreme Court Justice, you will write (and submit in advance of oral argument) a short (5-7 page) Precedent/Position Profile & Prediction ("4P") Memoranda memorandum discussing your Justice's past relevant opinions and writings and predicting how your simulated Justice will approach the constitutional issue(s) involved in the pending case. You will base your memorandum on a standard template with particular prompts. (If you participate as a justice in a third simulation, you will not submit a 4P memorandum.)

(ii) Edited Materials – For all cases on which you simulate a Supreme Court Justice (including the case, if any, for which you do not write a 4P memorandum), you will submit by separate .pdf file a 20-30 page compilation of key excerpts from especially relevant opinions, articles, or speeches by or relating to your Justice (including opinions by other justices joined by your Justice). In other words, you will physically or virtually “cut and paste” key excerpts from the most relevant materials, clearly labeled as to their source and highlighting key passages.

2A. Materials Prepared by Counsel for Petitioners or Respondents

If assigned to argue for either the Petitioner's or Respondent's side, you will prepare and submit in advance of oral argument:

(i) ASE Memorandum -- a short (4-6 page) memorandum summarizing the major theme, and legal and policy arguments, of the Petitioner or Respondent; and

(ii) Edited Briefs – a (20-30 page) edited compilation of the most important portions of the briefs submitted on your side, clearly labeled as to their source and highlighting key passages.

2B. Materials Prepared by Argument Overview Leaders

If assigned to provide an Argument Overview for a simulation case, you will prepare and submit in advance of your Overview:

(i) Outline or PowerPoint Display – a short (3-5 page) outline (or a 10-15 slide PowerPoint Display) to help class members follow the main points and sub-points you are addressing

(ii) Edited Decision Excerpts – a (20-30 page) edited compilation of the most important portions of (a) the lower-court opinion(s) rendered in the controversy being simulated and or (b) past Supreme Court decisions relevant to the controversy, clearly labeled as to their source and highlighting key passages.

3. Judicial Opinion

You will draft an 8-10-page portion of a judicial opinion reflecting the views you expressed when simulating a Justice for one case. You will append to your draft opinion a short (2-3 page) memo explaining your strategy and approach in writing the opinion.

GRADING AND WEIGHT OF STUDENT WORK IN THE COURSE

Final course grades will be based on student performance on each course component, as follows:

1. Re: Role-Playing as Justices (40% of course grade)
 - Two "4 P" Memoranda and Edited Materials (30% combined; 15% each)
 - Performances at Case Conference (10% combined)
2. Re: Representation of Petitioner/Respondent /Performance as "Argument Overview" Leader (15% of course grade)
 - Written Materials (i.e., ASE Memo or Outline/Display; Edited Briefs or Materials; Outline/PowerPoint Display for Argument Overview) (10%)
 - Performance at Oral Argument or as Overview leader (10%)
3. Judicial Opinion and Accompanying Memorandum (25% of course grade)

4. Short Evaluative Memorandum based on Actual Supreme Court Oral Argument (assignment in lieu of cancelled class on Wednesday, November 21; 10% of course grade)

5. Other Participation: (Performance as Justices at Oral Argument; Useful Contributions to the First Weeks of Class Discussion and During Post-Oral-Argument and Post-Case-Conference Analysis; Observation Questionnaires) (10% of course grade; graded on a Check-Plus/Check/Check-Minus/Not Attempted basis)

MY AVAILABILITY

***For UCSD office hours:

--I will generally be available a few minutes before and after class in the classroom.
--In addition, I will be available for “**coffee and conversation**” about class materials or other topics of interest at Peet’s on Scholar’s Walk near RIMAC, **Wednesdays, 2:00 P.M. to 4:30 P.M.** (except no OH on Wednesday, November 21).

***For “**virtual office hours,**” or to arrange office hours at a mutually convenient time other than regular office hours, email me at gsmith@cwsl.edu. [NOTE that this is NOT a “ucsd.edu” email address.] WHEN YOU EMAIL ME, please INCLUDE A REFERENCE TO “P SC 104A” in the subject line, so that I will know it’s not spam.

***For law-school-planning questions and recommendations: A number of the students taking this course are planning to attend (or thinking about attending) law school. As a full-time law professor guest teaching this course, I am happy to provide general counseling about law school and legal careers, arranging visits to law-school classes at my home institution, and writing letters of recommendation in appropriate cases. (I am not recruiting students to law school in general or my law school in particular. In fairness, I simply wish to make sure all potentially interested students know in advance of my policy on being a law-school resource.)

***In appropriate cases I am also willing to write recommendation letters for graduate study, internships (e.g., AIP or UCDC), foreign study, or other related opportunities.

Do not hesitate to contact me if I can be of any assistance on any matter of interest.