Seminar in Constitutional Law: Appellate Advocacy

Political Science 104 F
Spring 2016
Class time: Wednesdays 3-5:50 pm
Classroom: Social Sciences Building 104

Instructor Matthew Bergman
Department of Political Science
Ph.D. Candidate
Office: Social Sciences Building 331
E-mail: meberga@ucsd.edu
Office Hours: Fridays 12-1 pm and by appointment

Instructor Nazita Lajevardi, Esq.
Department of Political Science
Ph.D. Candidate
Office: Social Sciences Building 341
Email: nlajevar@ucsd.edu
Office Hours: Wednesdays 11-1 pm and by appointment

Course Description and Goals

This course will teach students fundamental concepts of legal practice in American courts of appeal focusing on the two elements of appellate advocacy: written and oral advocacy. Students will learn basic appellate procedure and legal analysis necessary to argue cases orally before a judge and in written format.

The ability to argue and write persuasively and effectively is a skill that many lack. Often, individuals turn to a training in legal education to attain these skills. Legal careers take many forms, but the ability to write and argue is a commonplace to all fields therein.

In this course, we want to teach you how to write persuasively, work in teams, and make oral arguments. At the end of the day, we want to equip you with a writing sample that you can use for future employment, grad school, etc. We are making a promise to give you hands-on training, but in return expect a heightened level of professionalism and dedication.

Course Format and Requirements

The course is a simulation of a second-year law school class. We require the following of you:
(1) Prepare for every class by reading and digesting the assigned material.
(2) Actively participate in class discussions.
(3) Work in teams (your final grade depends on your peers’ evaluation of you).
(4) Write an appellate brief with your team.
(5) With your teammates, orally argue your brief in front of a panel of judges.
(6) Attend every class, with the exception of a pre-arranged conflict.

This course provides advanced instruction on techniques of appellate advocacy, primarily brief writing and oral advocacy. Lectures on brief writing and oral advocacy, practical exercises, and guest presentations by members of the bar and (law) librarians are part of this course.
In particular, during the course of the quarter, you will spend weeks 1-4 learning what an appellate case is, how to conduct legal research, how to brief cases, and write persuasively. During weeks 5-7, you will work with three partners to prepare a simulated appellate response, tell a persuasive story, craft persuasive arguments, and present those stories and arguments in an appellate brief (to be due Week 10). Weeks 8-9 will focus on practice oral arguments and developing your public speaking skills.

We require you and your group to meet with one of us during weeks 7 and 9 in office hours to go over the status of and revisions to your written appellate briefs and oral arguments.

Your work will culminate in a final appellate brief and a series of oral arguments in front of panels of noted jurists during Week 10.

**Required Readings**

There is one required textbook for this class. We recommend you buy it ahead of time from Amazon or any other online vendors, to get a competitive price.

It is called: *Effective Appellate Advocacy: Brief Writing and Oral Argument* by Carole C. Berry
4th edition 978-0314908759
3rd edition (super cheap) 978-0314145857

We will have all additional PDFs available for you to read on the TED course website.

**Student Participation**

Students must participate in class. We will be asking you to share your issue statements and case summaries with the entire class. The only way to effectively learn how to analyze cases and write persuasively is to actively engage with one another. This requires you to come to class prepared. When reading and written assignments are due, it is because we expect you to share your work with your peers. If this seems burdensome to you, we recommend you enroll in another course.

*We strongly encourage you to bring laptops to class.* Yes, you read that correctly. This is because a great deal of legal research happens in online law libraries. However, we expect you to conduct yourselves with professionalism, to pay attention, and to only access materials relevant and necessary to the course. We reserve the right to change this policy at any time.

**Teamwork**

Weeks 5-10 of the course require you to work with 2-3 of your peers, who will be randomly assigned to your team. The expectations are an equitable distribution of work and effort. The end of course grade will include peer evaluations of your contribution to both the oral and written group assignments. We will be requiring you to meet as a group during the second half of the quarter during office hours but we HEAVILY suggest you meet outside class times and will introduce you to *doodle* a web-based scheduling tool. This aspect of the course is important as it will prepare you to work well with others in your professional or post-graduate experiences.

**Course Outline**
**Week 1: Introduction to the Appellate Process** - March 30, 2016
*Required Reading:* Berry 1.0-1.1 Initial Considerations and Standards of Review (ed4: p1-10; ed3: p1-9)
*Assignments Due: None*
-Hr 1: Introduction to Course and to the Appellate Process
-Hr 2: Guest Speaker: Annelise Sklar, Librarian, Legal Research (*bring your laptops*)
-Hr 3: Guest Speaker: Michael Devitt, Professor at USD School of Law, Head of Appellate Advocacy

**Week 2: Introduction to Legal Writing: CrUPAC** - April 6, 2016
*Required Reading:* Introduction to Advocacy PDF (on TED) pg.3-9
*Assignments Due: Assignment 1 Due (on TED and hard copy)*
-Hr 1: Lecture on CrUPAC - Format for Assignment Two
-Hr 2: Reviews first assignment
-Hr 3: Class assigned to small groups to work on a sample CrUPAC and go over it in class

**Week 3: Types/Parts of Brief** - April 13, 2016
*Required Reading:* Introduction to Advocacy PDF (on TED) pg.47-63
*Required Reading:* Nazita’s Lefkowitz Brief (USF School of Law Appellate Advocacy Brief 2011)
*Required Reading:* Obergfell SCOTUS Opinion (Gay Marriage case)
*Required Reading:* Loving v. Virginia SCOTUS Opinion (Interracial Marriage)
*Assignments Due: None*
-Hr 1: Lectures on Parts of an Appellate Brief
-Hr 3: Go over written answers with class.

**Week 4: Midterm and Persuasion Discussion** - April 20, 2016
*Required Reading:* Berry 4.0-4.7 Chapter 4; Primer on Persuasion (both editions ~13 pages)
*Assignments Due: None*
-Hr 1: Take Midterm
-Hr 2: Take Midterm
-Hr 3: Lecture on Persuasion

**Week 5: Preparation for Appellate Brief Writing** - April 27, 2016
*Required Reading:* Berry Chapter 5 Preparation for Brief Writing (both editions ~20 pages)
*Required Reading:* USD Law Appellate Advocacy Problem
*Assignments Due: None*
-Hr 1: Lecture on the importance of a brief, case law, secondary sources, and selection of theme/issues.
-Hr 2: Workshop on Question I (p.86) and II & III (pg 91) ← come prepared to answer these.
-Hr 3: Meet with your group and discuss roles, meeting times, and procedure for appellate advocacy problem.

**Week 6: Writing Opening Brief** - May 4, 2016
*Required Reading:* Berry Chapter 6 Writing the Opening Brief (both editions ~30 pages)
*Required Reading:* USD Law Appellate Advocacy Problem (review)
*Required Reading:* Lefkowitz Problem (review)
Required Reading: Template for USD Law Appellate Advocacy Problem (that your group will fill out and turn in eventually)

Assignments Due: Second Assignment Due (on TED: CRuPAC/IRAC Assignment)
-Hr 1: Lecture on parts of the brief in general, the USD Problem, and group expectations.
-Hr 2: Workshop on Question I (p.130) ← come prepared to answer this question
-Hr 3: Meet with your group to formulate a game plan for researching and writing your side of the argument, sign up for required office hours next week.

Week 7: Appellee and Reply Briefs - May 11, 2016
Required Reading: Berry Chapter 7 Appellee and Reply Brief (both editions ~14 pages)
Required Office Hours: With your group & Instructor
Assignment Due: Begin working on written brief with your group, divide labor, etc.
-Hr 1: Lecture on Appellee and Reply Briefs and their contents.
-Hr 2-3: Groupwork in class to work on your group written briefs. (Laptops strongly encouraged).
-Hr 2-3: Potential Guest Speakers

Week 8: Preparing Oral Arguments - May 18, 2016
Required Reading: Berry Chapter 9 Preparation for the Oral Argument (both editions ~13 pages)
Assignments Due: Come prepared with a preliminary transcript of what you think should be in your group’s oral argument.
Assignment Due: Continue working on written brief with your group.
-Hr 1: Lecture on oral arguments, writing out and practicing your arguments, show video of oral argument
-Hr 3: Meet with group to go over your preliminary transcripts and make edits/changes
-Hr 3: Workshop - Read out/practice your preliminary transcripts to the class

Required Reading: Berry Chapter 10 Presentation of the Argument (both editions ~40 pages)
Assignment Due: Come with a complete and final transcript of your group’s oral argument that you have practiced saying out loud at least 3 times in front of others or a mirror. (We will try to videotape you).
Assignment Due: Continue working on written brief with your group - final draft due WEEK 10, next week
Required Office Hours: With your group & Instructor
-Hr 1: Lecture on presenting oral arguments, attire, conduct, and answering questions from judges.
-Hr 2-3: Practice your oral arguments with your group and in front of the class.

Week 10: In Class Oral Arguments - June 1, 2016
Required Reading: None
Assignments Due: Final Written Briefs
Assignments Due: Oral Arguments in front of Panel of Judges

Grading

5 pts Assignment 1: Appellate Jurisdiction (Due Week 2)
5 pts Assignment 2: Brief A Case (Due Week 6)
25 pts In Class Midterm Exam (Week 4)
25 pts Oral Argument to be judged by a panel of judges (Week 10)
25 pts written Appellate Memorandum (Final draft to be turned in Week 10)
15 pts Participation (Evaluation of your work by your peers and attendance)