

**Seminar in Constitutional Law:  
Appellate Advocacy**

Political Science 104 F  
Spring 2016

Class time: Wednesdays 3-5:50 pm  
Classroom: Social Sciences Building 104

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appointment

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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.



**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)

Required Reading: Jaffee v. Redmond on TED (skim for Devitt's talk, for a synthesized version, visit: <http://www.casebriefs.com/blog/law/evidence/evidence-keyed-to-mueller/privileges/jaffee-v-redmond-2/>)

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: Obergefell 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 2: Workshop on Application of Questions Presented, Statement of Facts, Procedural History, and Summary of the Argument on Obergefell and Loving v. Virginia. Bring hard copies of cases to class to consult your in-class work.
- 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

### **Week 9: Presenting Oral Arguments - May 25, 2016**

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)