

**POS 4606: The U.S. Supreme Court**  
**Spring 2009**  
**T/Th 11:00-12:15; HLS 160**

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**COURSE OBJECTIVES/LEARNING OUTCOMES:** The Supreme Court of the United States (SCOTUS) sits at the pinnacle of the American legal system. The nine justices that make up this Court decide matters that impact individuals, our economy and its many business interests, social relationships, private lives, and public activities. Their decisions may reach only a small number or they might precipitate international repercussions. Not surprisingly, the Supreme Court's visibility and importance has made it one of the most studied legal institutions, and other national courts and international tribunals regularly cite its rulings.

This course is designed as an in-depth examination of the Supreme Court of the United States. During the semester, we will explore the Court's history, its membership, the politics of selecting justices, the internal procedures and rules that govern its work, and the theories constructed by political scientists and legal scholars about how the justices go about making their decisions. We will also look at how the Court interacts with other governmental actors, and discuss studies that have evaluated the Court's impact on society as well as the law.

Because this is an advanced course, students will be expected to do library research and read books and articles beyond the required texts. You will have to find the library and do more than internet-based research. You will also engage in a simulation exercise, which will be conducted throughout the semester. While this is not a typical case-law course, we will be reading legal decisions and you will be expected to keep a journal of current decisions handed down by SCOTUS this semester by subscribing to an electronic legal service.

At the end of the semester students will be familiar with a basic history of SCOTUS and the significant "Courts;" be able to explain the agenda-setting and case-selection processes of the U.S. Supreme Court and the major theories of decision making; identify the strengths and weaknesses of the nomination and confirmation process of selecting justices; show familiarity with the various actors that appear before the Court including the Solicitor General and interest groups; know well the decision-making tendencies of the current Court; and demonstrate an advanced understanding of the Court as a coordinate branch of government within the American political system. Students will also sharpen their research skills in this course by conducting on-line legal research, listening to audio files of oral arguments, and utilizing print media for historical references.

**AUDIENCE:** For political science majors, this course fulfills a 4000-level political science elective requirement. Students interested in law and legal institutions will benefit significantly from this class.

**PREREQUISITES/CO-REQUISITES:** Although there are no prerequisites for this course, I assume that all students have taken at least Judicial Process (POS 3283) or Constitutional Law (either Powers or Limits). This is a 4000-level course.

**CATALOG DESCRIPTION:** Intensive study of U.S. Supreme Court, its internal processes, decision making, personalities, and the impact of its decisions. Relationships with other federal branches and participants are also examined.

**DROP DATE:** The university drop date is Feb. 27th. If you cannot or do not want to complete this course, do not just stop coming to classes as I will be forced to give you an F (or an F0). You must go on-line through my.fiu.edu by February 27th, and drop the course to receive a DR grade. A word of advice: print a document confirming that you dropped the course when you drop it.

I would also ask that if you drop the course anytime after the third week of class, that you let me know via email so that I will not be relying on you for some component of the simulation.

### **REQUIRED BOOKS AND RESOURCES**

The following books are REQUIRED for this course. They are available at the university bookstore in GC. There are also additional purchases noted below.

Understanding Supreme Court Opinions (6th ed.) by T. R. van Geel  
The Choices Justices Make by Lee Epstein and Jack Knight  
The Hollow Hope (2nd ed.) by Gerald N. Rosenberg  
Judicious Choices (2nd ed.) by Mark Silverstein  
Storming the Court by Brandt Goldstein

One spiral-bound notebook (you do not need the ones that are divided or fancy and you can even go with the ones that are smaller than 8½ x 11").

**COURSE REQUIREMENTS:** Grades for this course are given on the basis of one examination, the submission of a significant written assignment, attendance at lectures, and participation in class discussions and in a semester-long simulation. Additional assignments (graded or ungraded) may be distributed during the semester; they will be posted via email and/or announced in class. Students must sit for the examination at the time it is given and submit all written assignments in order to receive a grade higher than a D-. Late assignments will receive 0 credit but will be acknowledged as "submitted." In the event that there are quizzes, students who are absent will receive a 0 and will not be able to take a make up quiz. Make-up examinations are only given in very rare cases of extreme emergency where advance notice has been provided to me, documentation is provided to substantiate the emergency, and where I can confirm through independent sources the veracity of the emergency.

Grades for this course are given on the basis of the following assignments and examinations.

Research Paper (Feb. 24)	25 points
Draft (Feb. 10)	Required
Examination (Mar. 31 & Apr. 2)	50 points
Semester-long Simulation	25 points
In-class case reports	
Journal	
Oral Component	
Final Written Component	
Attendance & Participation	Required (see below)

**GRADING:** This class will be graded on a combined curve/minimum standards scale. Because each performance measure in this class is weighted differently, I do not assign letter grades nor do I curve individual assignments prior to calculating final grades for the course.

Minimum standards: In order to receive any academic credit for the course (a grade of D- or better), a student must earn at least 50 points toward their final grade, submit a draft (minimum 6 pgs) research paper, submit the final research paper, sit for both parts of the examination, participate in the oral argument component of the simulation, and have been absent for not more than six classes.

The curve: Of the total number of students registered for a grade after the drop date,

- The top ten percent of the class will receive an A or A-.
- The next twenty percent of the class will receive a B+, B or B-.
- The next fifty percent of the class will receive a C+, or C.
- The lowest twenty percent of the class may receive a C-, D+, D, D- or F.

**ATTENDANCE & PARTICIPATION:**

Roll will be taken each and every class. Do not enter the classroom once I have started class; do not leave until I dismiss the class.

Students are required to attend class, to arrive on time, and to remain for the duration of the class. Students will not be permitted to enter the classroom once the lecture has started. Early departures should be an exception and arranged with me in advance. Absences due to other academic commitments must be discussed with me during office hours at least 24 hours in advance of the anticipated absence. You should notify me as soon as possible of medical emergencies and other exigent circumstances as excuses for these events are at my sole discretion.

A student who is absent for more than six (6) class sessions will automatically receive a grade of D- or F. A student who misses no more than two classes will receive a three (3) percentage point “bump up” in calculating their final overall grade.

Every student is expected to engage in meaningful and productive verbal participation in my class. Meaningful and productive participation is that which reflects that you have read the assignments, thought about them, and can contribute to class in a positive manner. Flippant, off-the-cuff and opinionated remarks are not “meaningful” or “productive.”

Students who are consistently prepared and evidently engaged may receive a three (3) percentage point “bump up”; students who consistently fail to participate or are evidently unprepared for class when called upon will have a “bump down” of three (3) percentage points, which will be deducted from their overall final grade.

No student will receive more than one “bump up.”

**EXAMINATION:**

There will be one examination. It will be given over two days during class time on March 31 and April 2. It may include multiple-choice, true/false, short answer or essay. I will advise you in well in advance as to the complete format. Students must take the examination on the days and times it is given. There is no make-up examination unless a student is hospitalized in critical or near-critical condition for an accident beyond their control (cosmetic surgery does not qualify). Stay healthy, especially around the exam.

**RESEARCH PAPER:** This paper (10-12 textual pages not including footnotes) will be your personal study of a current justice sitting on the USSC, the Office of the Solicitor General, or a significant litigant before the Court. I will appoint you to your topic during the third week of classes so you may begin

your work. Details of the paper will be discussed and distributed at the time of the appointments. You will *conduct research* using a variety of sources such as book-length biographical works, scholarly articles and popular sources like newspapers and magazines. You will also need to do some legal research and listen to oral arguments on-line. This assignment is critical for your other assignments as you need to know *well* the person or organization you will be role-playing for the simulation exercise. I expect you to use proper citation methods and an acceptable style for research papers like Turabian, APA or MLA and to reference those styles in your list of references.

**On February 10th**, a printed “starting” draft of six pages (including footnotes) is due at the beginning of class and an electronic version of the draft must be submitted to TURNITIN.COM not later than 10:50 AM. (I will provide the course id number to you prior to the due date.) The draft will be ungraded, but required. The sole purpose of the draft is to show me that you have made significant headway on your research.

**On February 24th**, a printed final version of your complete paper is due at the beginning of class and an electronic version must be submitted to TURNITIN.COM not later than 10:50 AM.

**SIMULATION:** This simulation will run throughout the semester and is made up of several components that will each factor into your grade. They include your class discussion as “your” assigned Justice or litigant, your journal, an oral component, and a final written component.

**Journal:** Every student will subscribe to the Legal Information Institute at Cornell University in order to receive announcements of USSC decisions as they are handed down. As decisions are received (generally on Mondays and Wednesdays), you will post to your journal a handwritten summary of the case, the area of law affected, and the perspective of your justice or litigant’s position on the case. Did your justice vote to broaden individual rights, liberalize bureaucratic procedures, constrain or strengthen congressional or the executive’s powers, empower states, etcetera? Did your litigant win or lose? Think about the big picture and where your justice is on the issue relative to the others. You should note whether their justice was in the majority or a dissenter, whether they wrote an opinion on their own, and who voted with them. You should have an entry for every case decided by the Court this semester, commencing once you have received your “assignment.”

Journals must be kept in a spiral-bound notebook purchased at the beginning of the semester and they must be brought to every class. These notes will help you understand your justice and assist you in the simulation and final assignment. They will also serve as the basis for our discussions and therefore, **MUST** be kept up to date. Failure to be prepared for discussion will be counted the same as an absence (minus one point from overall grade).

Journals may be collected randomly throughout the semester, but will be turned in on the same day as your opinion and analysis assignment, and will be considered as part of your grade for that work.

**Oral Component:** This activity is part of the role-play that we will engage in during the last two weeks of the semester. You will be provided the facts and legal briefs to a case and sit as a member of the U.S. Supreme Court for oral argument and engage in the weekly conference held by the Chief Justice, or if a litigant, you will brief and argue a case. Your grade will be based on my appraisal of your preparation and your participation, as well as your accurate portrayal of the justice or litigant to whom you are assigned for this simulation.

**Written Component:** Justices will be asked to write an opinion on the case which you will have heard as a justice and analyze the decision-making activity of your panel by applying the theories we have learned this semester to the simulation. Litigants will be prepare an outline of their argument and self-

assessments of their performance in attracting the requisite five votes on the Court. Details will be distributed in advance and your journals will be due at that time.

#### **MY EXPECTATIONS AND PREFERENCES:**

1. **YOUR ATTITUDE & PREPARATION:** I expect you to give 100 percent to your studies and to my class. You should be excited by the topic (or pretend to be). You should be passionate about your work and show me that you want to learn and excel.
2. **YOUR BEHAVIOR:** This is a university. Your classroom conduct should be that of an adult student who truly wants to learn (see #1). High school antics and sidebar conversations are not acceptable behavior. Should you engage in adolescent behavior, you will be asked to leave and will be marked absent for that class. If you are here merely for the credits, I recommend that you consider another course.
3. **TARDINESS:** Do not walk into my classroom once I have started class. I will direct you to leave.
4. **ELECTRONIC DEVICES:** Turn OFF your cellphones/beepers/watches/computer audio or any other noise-making devices (note: a vibrating cellphone is a noise-making device). Should your personal device go off during class, please quietly excuse yourself from the room for the duration of the class meeting. And don't even think of answering your phone, text-messaging or IMing in my class as I will treat it as disruptive conduct under the Student Code of Conduct.
5. **LAPTOPS:** No laptops may be used during class.
6. **SEATING:** There will be assigned seats for the semester. Choose wisely (breaking up is hard to do but it is even harder when you have to sit next to him/her for the duration of the semester).
7. **MAKE-UP EXAMS:** There are no make-up exams. Stay healthy.
8. **INCOMPLETES:** I have given 3 incompletes in my 23 years of teaching and those were for students who had completed the bulk of the course and only missed the final exam due to a medical emergency. In short, incompletes are rarely an option.
9. **OFFICE HOURS:** I have set office hours two days a week, am generally in my office every day at varying times, or will make alternative arrangements to meet with you during business hours. Please do not bring me "problems" at the podium after class; "office hours" is the appropriate venue to discuss important or personal concerns including attendance issues, grading issues, and performance concerns.
10. **CHECK YOUR EMAIL:** I use your FIU email address to communicate with you out of class. You must check your FIU email the evening (after 6 PM) before each class. Additional assignments, changes in assignments, on-campus events, interesting websites, and scholarship information are just some of the informative tidbits you will receive from me.
11. **SENDING EMAIL TO ME:** Your email communications to me must include a subject line, proper grammatical structure, impeccable spelling, and your full name in closing. Failure to communicate professionally will result in an incomprehensible return message.
12. **COMMUNICATIONS:** You or someone in your family can get a message to me 24 hours a day through email or voicemail. Do not call to let me know you are missing class on one or two days. DO call or have someone call if you are hospitalized for three or more classes.
13. **A NOTE ON READINGS AND LECTURES:** During class I may not go over everything—or even anything -- that is in your assigned readings. That would be quite boring for the student who actually reads. Class will be used to highlight difficult topics, engage in critical analysis, role play, discuss and debate, or to talk about current events and their relationship to your readings. You should read the assignments BEFORE you come to class as I will happily entertain any and all questions on them during our class sessions.
14. **DEDICATION:** I expect you to give 100 percent to your studies and to my class. You should be excited by the topic (or pretend to be). You should be passionate about your work and show me that you want to learn and excel. If you are taking this course merely for the credits, I recommend that you consider another class.

## TENTATIVE COURSE OUTLINE

Bring assigned books and readings, the U.S. Constitution, and your journal with you to every class. Readings and tasks should be completed in advance of the class for which they are assigned!

Jan. 6 Course Introduction  
Readings: None.

Jan 8 The Court and the Constitution

Reading: Syllabus, VG 1 and 2, U.S. Constitution, art. 3 and 11th Amendment

Tasks:

a) Make sure your FIU email account is fully functional. Email will be one of the ways I regularly communicate with you. If you have problems, go to PC 413 for technical assistance.

b) From your FIU email account, send an email to Dr. Salokar at salokar@fiu.edu. The subject of the email should be: **SCOTUS Class #1**

Include in the body of your email the following:

--Your full name and Panther ID number

--"I have read the syllabus and understand my obligations as a student in this course."

--One paragraph (5 to 7 sentences) telling me which justice or litigant you would like to be this semester with a supporting argument as to why I should give you this particular assignment. Please write this professionally and not in email shorthand. .

--Your major and the number of credits you have completed towards your degree

--What you believe is your personal academic strength (what do you do best in school work) and what you believe is your most significant academic weakness

--Cast your vote for the Rosenberg book sections we will read: (A) Civil Rights, (B) Abortion & Women's Rights, or (C) The Environment, Reapportionment and Criminal Law.

c) Buy books, spiral-bound notebook, and 2 large blue books.

d) Subscribe to Legal Information Institute on the Web at

<http://www.law.cornell.edu/focus/bulletins.html>. You want to receive the **liibulletin**. You may subscribe to the SCt previews, but it is not required. You do not want/need the NY bulletins, so don't subscribe to those! You might also check out the LII home site at <http://supct.law.cornell.edu/supct/> so you know what you're getting into!

Jan. 13 The Technical Guts of an Opinion

Readings: VG 3, 4 & 5

Jan. 15 The Student's Work: Briefing and Analyzing

Readings: VG 6, 8, 9

Jan. 20 The Role of the Court in a Republican Democracy: Take One

Readings: Alexander Hamilton, The Federalist #78

<http://www.constitution.org/fed/federa78.htm>

*Assignments Announced*

Jan. 22 The Role of the Court in a Republican Democracy: Take Two

Readings: TBA

Jan. 27 The Role of the Court in a Republican Democracy: Take Three

Readings: Rosenberg, xi-36, 420-431

Jan. 29 The Nuts and Bolts of Process: The Stages of a Case

Readings: Study closely: E & K, pg. 187 (Appendix A)

- Feb. 3 Supreme Court Rules  
Readings: Rules 10, 24, 25, 27, 28, 33, 37, 39 at  
<http://www.supremecourtus.gov/ctrules/2007rulesofthecourt.pdf>
- Feb. 5 Agenda-Setting and Certiorari  
Readings: TBA
- Feb. 10 Clerks and Staff  
**Drafts Due**  
Readings: TBA
- Feb. 12 Judicial Selection: Presidential Interests  
Readings: Silverstein, 1-49
- Feb. 17 Judicial Selection: Congressional Interests  
Readings: Silverstein, 49-101
- Feb. 19 Judicial Selection: Public Interests or Group Interests  
Readings: Silverstein, 101-152
- Feb. 24 Contemporary Hearings  
Readings: None  
**Research Papers Due**
- Feb. 26 The Office of the Solicitor General  
Readings: TBA
- Mar. 3 Litigants & Repeat Players  
Readings: TBA
- Mar. 5 Theories of Judicial Decision Making  
Readings: E & K, 1-55
- Mar. 10 Decision Making II  
Readings: E & K, 112-157
- Mar. 13 Decision Making III  
Readings: E & K, 157-186
- Mar. 17 – 19 SPRING BREAK – NO CLASSES  
Reading: I recommend that you finish Storming the Court, if you have not completed it.
- Mar. 24 A Topical Examination of the Court's Work – Topic ONE  
Readings: Rosenberg, Part TBA
- Mar. 26 Further Examination of the Court's Work – Same-Sex Marriage  
Readings: Rosenberg, Part 4
- Mar. 31 **Examination – Part One**
- Apr. 2 **Examination – Part Two**
- Apr. 7 Argument Preparation
- Apr. 9 Oral Arguments (Panel A & B)  
Panel A & B written assignments due not later than midnight April 11 via email attachment.
- Apr. 14 Oral Arguments (Panel C & D)  
Panel C & D written assignments due not later than midnight April 16 via email attachment.
- Apr. 16 Course Conclusion, Summary & Evaluations