

SUPREME COURT SEMINAR
LAW B 573
3 CREDITS
SYLLABUS FOR WINTER 2021
VERSION 1.0 (12/21/20)

Affiliate Faculty Will Dreher

Class Times: Mondays and Wednesdays from 3:30 p.m. to 5:00 p.m.

Office Hours: By appointment (by phone or Zoom)

ZOOM Class Link:

COVID: This class will be held in the midst of a pandemic. There are many things more important than this class, among them your health, your family, and your family's health. If anything COVID-related comes up during the course of the quarter that you think will impact your work, please reach out and we can figure out a solution together. The syllabus below was modified from a prior course syllabus and so may include requirements that appear relatively strict; if necessary, those will not be followed.

I. GENERAL CLASS DESCRIPTION

This seminar will examine Supreme Court decision making from both a theoretical and practical perspective. The class will survey representative cases that are currently pending on the Court's docket. Extensive preparation will be required of class members who will play the roles of lawyers and justices' clerks as they simulate oral arguments and draft bench memoranda for the justices. Emphasis will be placed on refining your writing skills and oral communication skills, developing appellate advocacy skills, and gaining a better understanding of how the Supreme Court operates. Enrollment is limited to a maximum of 12 students.

II. LEARNING OBJECTIVES

- Students will think critically about the institutional processes of the Supreme Court.
- Students will refine their written and oral advocacy skills.
- Students will practice evaluating complex legal arguments from an objective standpoint.

III. CLASS MEETINGS AND ATTENDANCE REQUIREMENTS

This class will meet on Mondays and Wednesdays from 3:30 p.m. to 5:00 p.m. Given the nature and size of the class, regular attendance is mandatory. If you know at the beginning of the quarter that you will be absent from class on a particular day due to a planned and unavoidable absence, please let me know during the first week of classes so that we can work together to avoid giving you an assigned role on the day or days you will miss. If you must miss a class for which you have an assigned role due to an unplanned emergency or illness, let me know via email or phone, and try to arrange for a colleague to play your assigned role for you that day. In addition, see note above about the pandemic.

IV. OFFICE HOURS

Office hours are by appointment. I am happy to meet with students as often as demand warrants. Please simply email me if you would like to set up an appointment. In addition to discussing course-related matters during office hours, I am happy to meet with students to talk about judicial clerkships, working at a law firm, working as a public defender, or working for the Department of Justice, for example. I previously clerked for two years (one year for then-Judge Kavanaugh on the D.C. Circuit and one year for Justice Kagan on the Supreme Court).

V. GENERAL CLASS FORMAT AND STRUCTURE

During the first three weeks of the class, we will devote our class time to gaining a general understanding of the Court's jurisdiction and decision-making process. I will lead these discussions, but will ask for significant participation from the class.

The remaining weeks of the class will focus on four specific cases currently pending before the U.S. Supreme Court. Students will be expected to: 1) read the briefs in all four selected cases, 2) to locate and read relevant authorities cited in the briefs, and 3) to come to class prepared to "simulate" a pre-assigned role of oral advocate or justice.

VI. ORAL ARGUMENTS AND BENCH MEMOS (WEEKS 4 THROUGH 10)

During weeks 4 through 10 of this class, class meetings will focus on four specific cases currently pending before the United States Supreme Court. The briefs that the parties filed in the actual cases will be available on SCOTUSBlog, and all members of the class are expected to read them. Some selected *amicus curiae* briefs (meaning "friend of the court" briefs) will be assigned as reading. In addition to reading the assigned briefs and lower court opinion (which is also available on that case's SCOTUSBlog page), students will need to determine on their own which additional relevant authorities cited in the briefs (e.g., key cases or other key legal authorities) should be consulted. Students should look up and review these relevant authorities using Westlaw or other library resources. This means that reading for oral argument weeks will be heavy and that a fair amount of "self-teaching" will be required during the weeks devoted to oral arguments.

A. Case preparation days: On "case preparation" days, I will provide a high-level overview of the case that we will be covering that week with the goal of setting the stage, putting the case into a broader legal context, and providing you with a basic doctrinal framework for the issues we will be studying through that particular week's case. We will also discuss the strengths of the arguments in the briefs. Although I will lecture some during these case preparation sessions, you should be ready and prepared to contribute to class discussion of the cases and to answer questions about the cases.

B. Oral argument and decision: On days with a scheduled oral argument, we will hold a simulated oral argument in the assigned case for approximately the first hour of class. Each student will be assigned to complete one oral argument during the quarter. This means that a few

students will be assigned an oral advocacy role in each case, and the remaining students (either 8 or 9) will serve as the justices of the Court in each case. These students should prepare a list of questions for oral argument. The questions should be a mix of questions that could be asked by the Court’s conservative, moderate, and liberal Justices. After the oral argument session each week, the justices will hold a simulated “conference” to discuss the case and to vote on the case.

Of the students serving as justices, three will have been assigned to draft a bench memorandum on the case prior to oral argument. Those memoranda should be prepared from the perspective of a law clerk: they should be objective evaluations of the parties’ arguments, for the Justice’s benefit. (We will discuss what a bench memorandum should look like in greater detail during the course.) In drafting the bench memoranda, assume your Justice is apolitical (that is, focus on the strength or weaknesses of the legal arguments, rather than any political valence to the case).

During the quarter, each student should expect to: (a) deliver one oral argument; (b) produce one bench memorandum from the perspective of a law clerk for one case of between 2,000 and 3,000 words (roughly 4-6 single-spaced pages); and (c) sit as a justice when you are not delivering oral argument, being prepared to ask questions of both sides. The weeks that you sit as a justice without a bench memorandum assignment will be your “light” weeks in terms of reading and work load, and the weeks that you deliver an oral argument or sit as a justice with an assigned bench memorandum will be your “heavy” weeks in terms of reading and work load.

Each week, 2-3 students will participate in oral argument and 2-3 students will turn in bench memoranda for that week’s case. Thus, 4-6 students will have a larger assignment (oral argument or a bench memorandum) each week, and each student will complete two larger assignments during the quarter. The following schedule will dictate student assignments:

| Oral Argument Case | Bench Memorandum Case | Cases Sitting as a Justice |
|--------------------|-----------------------|----------------------------|
| 1 | 3 | 2, 3, 4 |
| 2 | 4 | 1, 3, 4 |
| 3 | 1 | 1, 2, 4 |
| 4 | 2 | 1, 2, 3 |

Because of the heavy out-of-class workload and the expectations for students acting as advocates and justices during oral arguments, I have built into the class schedule a number of “SHORT DAYS” where instruction will only last 45 minutes and “NO CLASS” days where you will be able to use that time to work on your out-of-class assignments.

C. Cases: At least four weeks prior to the oral argument for each case, I will email the list of relevant briefs to read as a Justice or oral advocate in preparing for each case. Those briefs, along with the appellate opinion below, will constitute the “closed universe” of the case. Advocates and justices should not, therefore, research the facts of the case beyond those briefs and the opinion below. Although advocates and justices can review additional cases beyond those cites in those briefs or the opinion below for background, they cannot ask questions or cite those cases during oral argument or in conference discussions.

The four cases are listed below. The briefs that are in **bold** are the positions that will require an oral advocate. Feel free to skim/lightly read the amicus briefs, as they often cover ground that is similar to the ground covered in the main briefs.

Case 1: *Van Buren v. United States*

Issue: Whether a person who is authorized to access information on a computer for certain purposes violates Section 1030(a)(2) of the Computer Fraud and Abuse Act if he accesses the same information for an improper purpose.

Briefs:

Brief for Petitioner

Brief for Respondent

Reply for Petitioner

Amicus Brief of Orin Kerr

Amicus Brief of Electronic Privacy Information Center

Case 2: *Uzuegbunam v. Preczewski*

Issue: Whether a government's post-filing change of an unconstitutional policy moots nominal-damages claims that vindicate the government's past, completed violation of a plaintiff's constitutional right.

Briefs:

Brief for Petitioner

Brief for Respondent

Reply for Petitioner

Amicus Brief of United States

Amicus Brief of ACLU

Amicus Brief of D.C. (and other states)

Case 3: *Lange v. California*

Question Presented: Whether the pursuit of a person whom a police officer has probable cause to believe has committed a misdemeanor categorically qualifies as an exigent circumstance sufficient to allow the officer to enter a home without a warrant.

Briefs:

Brief for Petitioner

Brief for Respondent

Reply for Petitioner

Amicus Brief of ACLU

Amicus Brief of Illinois (and other states)

Brief of court-appointed amicus

Case 4: *United States v. Cooley*

Issue: Whether the lower courts erred in suppressing evidence on the theory that a police officer of an Indian tribe lacked authority to temporarily detain and search the respondent, Joshua James Cooley, a non-Indian, on a public right-of-way within a reservation based on a potential violation of state or federal law.

Briefs: Will be announced later.

VII. RESPONSIBILITIES OF PARTICIPANTS

The success of this simulation-based class depends on the willingness of the participants to take their roles as justices and oral advocates seriously. The responsibilities of class members include:

1. Reading the assigned materials carefully and coming to class prepared.
2. Drafting a bench memorandum (from the perspective of a law clerk), of between 2,000 and 3,000 words, for submission by the class of the oral argument for which you were assigned to draft a bench memorandum (i.e., by 3:30 p.m. that day).
3. Delivering one pre-assigned oral argument. You should be prepared to deliver a polished, professional oral argument. Please also dress the part on the day of your oral argument by wearing business attire.
4. Being prepared to participate actively in the oral arguments that you are assigned to judge. This means that you should come to oral argument with numerous questions you would ask of both sides. Note: You must refrain from reading the actual oral argument transcript from cases we will be covering in class until after we have held our own mock oral argument in class. This rule is to prevent you from simply parroting the questions that the Justices on the Court actually asked. Don't worry if—prior to receiving and reading this course syllabus—you happened to read some of the oral argument transcripts for cases we will be covering; simply refrain from re-reading the transcripts again.

VIII. REQUIRED READINGS

Some required readings will be available for free online through Westlaw and/or SCOTUSBlog, others will be distributed via email or Canvas, and others will be from *The Supreme Court Sourcebook*. Readings from *The Supreme Court Sourcebook* are referred to in the reading list below as “SCS.” Used copies of *The Supreme Court Sourcebook* can be purchased for a fraction of the price of new copies.

IX. OPTIONAL SUPPLEMENTAL RESOURCES AND READINGS

For those of you who are interested in reading supplemental, optional materials on the Court, I would recommend the following resources that cover the Court and its justices:

- The Supreme Court’s own website has some useful information about the Court, the justices, and the Court’s docket at www.supremecourtus.gov. There is a link on the site to briefs in pending cases; this link will allow you to access all briefs that have been filed in a case (not just those briefs that I assign to you from a given case).
- The best website for tracking current Supreme Court developments is SCOTUSBlog, which can be found at www.scotusblog.com. If you read SCOTUSBlog, refrain from reading posts about the oral arguments in the cases we will be deciding in class until after we have held our own oral argument in class. The same rule follows for reviewing posts about the Court’s own opinions in cases we will be deciding.
- The best comprehensive resource on Supreme Court practice is the “Supreme Court Practice” book authored by Eugene Gressman, Kenneth Geller, Stephen Shapiro, Timothy Bishop and Edward Hartnett. This book is considered the “bible” for Supreme Court practitioners in terms of Supreme Court rules, procedures and protocol. (Note: Do not purchase this book, as it is most useful for practitioners.)

X. GRADING

Students will be graded on the basis of the following:

1. Your bench memorandum will count for 45 percent of your grade.
2. Your performance arguing one case will count for 35 percent of your grade.
3. Your performance playing the role of your assigned judge when judging cases being argued by others and when voting in conference will count for 20 percent of your grade.
4. Participation in general class discussions is expected, but will not be given weight toward the final grade, with one exception—because attendance is crucial to the dynamics of the course, unexcused absences will count against you (but see the COVID note above—this does not include absences due to pandemic-related issues or other emergencies).

Late assignments will be marked down one half a letter grade (*e.g.*, from an A to an A-), unless I have granted you a “due date” extension. Extensions will be granted in extenuating circumstances, and they must, whenever possible, be sought well ahead of your original due date. There will be no final exam.

XI. WEEKLY SCHEDULE AND ASSIGNED READING

| CLASS SESSION | TOPIC | ASSIGNED READING |
|--------------------------|---|--|
| | Part I. The Court's Decisional Process | |
| Monday, January 4 | <ul style="list-style-type: none"> • An Intro to the Court • Confirmation process • The Court's legitimacy | <ul style="list-style-type: none"> • Course syllabus; • If you are unfamiliar with any current Supreme Court Justices, review their Wikipedia biographies; • <i>Supreme Court Sourcebook</i> ("SCS"): <ul style="list-style-type: none"> • Chapter 1; • Pages 31-37; • Pages 58-78; • Read this article; • Read this article; • Read this article. |
| Wednesday, January 6 | Supreme Court jurisdiction | <ul style="list-style-type: none"> • SCS: <ul style="list-style-type: none"> • Pages 93-94 (through "1. Statute and Court Rule"); • Pages 123-171; • Read Dart Cherokee Basin Operating Co. v. Owens. |
| Monday, January 11 | Certiorari | <ul style="list-style-type: none"> • SCS: <ul style="list-style-type: none"> • Pages 184-211; • Pages 226-228; • Pages 234-252; • Pages 254-260; • Pages 276-280. • Note: You can skim the sample cert petitions and pool memos; read them just to get a general sense of what cert-stage filings and pool memos look and feel like. |
| Wednesday, January 13 | Merits Briefing | <ul style="list-style-type: none"> • SCS: <ul style="list-style-type: none"> • Pages 287-310; • Pages 356-376. • Review merits briefs in <i>Heien v. North Carolina</i>, which will be provided by email/Canvas. |
| Wednesday, | Oral Argument | <ul style="list-style-type: none"> • SCS: |

| | | |
|------------------------|---|---|
| January 20 | | <ul style="list-style-type: none"> • Pages 402-424; • Pages 447-449. • Review oral argument in <i>Heien v. North Carolina</i>, <i>Rodriguez v. United States</i>. |
| Monday, January 25 | SHORT CLASS (45 minutes): Judicial opinions | <ul style="list-style-type: none"> • SCS: <ul style="list-style-type: none"> • Pages 453-465; • Pages 470-476; • Pages 487-490; • Pages 519-523. • Final opinions in <i>Heien v. North Carolina</i>. |
| | Part II. Case Discussions and Simulations | |
| Wednesday, January 27 | SHORT CLASS (45 minutes): Case preparation – Case 1 | <ul style="list-style-type: none"> • Briefs for Case 1 |
| Monday, February 1 | NO CLASS | <ul style="list-style-type: none"> • Case preparation - Individually |
| Wednesday, February 3 | Oral argument and decision: Case 1 | <ul style="list-style-type: none"> • Case 1 Justices: Turn in Case 1 Bench Memoranda by start of class |
| Monday, February 8 | SHORT CLASS (45 minutes): Case preparation - Case 2 | <ul style="list-style-type: none"> • Briefs for Case 2 |
| Wednesday, February 10 | NO CLASS | <ul style="list-style-type: none"> • Case preparation - Individually |
| Wednesday, February 17 | NO CLASS | <ul style="list-style-type: none"> • Case preparation - Individually |
| Monday, February 22 | Oral argument and decision: Case 2 | <ul style="list-style-type: none"> • Case 2 Justices: Turn in Case 2 Bench Memoranda by start of class |
| Wednesday, February 24 | SHORT CLASS (45 minutes): Case preparation – Case 3 | <ul style="list-style-type: none"> • Briefs for Case 3 |
| Monday, March 1 | SHORT CLASS (45 minutes): Case preparation - Case 4 | <ul style="list-style-type: none"> • Briefs for Case 4 |
| Wednesday, March 3 | NO CLASS | <ul style="list-style-type: none"> • Case preparation - Individually |
| Monday, March 8 | Oral argument and decision: Case 3 | <ul style="list-style-type: none"> • Case 3 Justices: Turn in Case 3 Bench Memoranda by start of class |
| Wednesday, March 10 | Oral argument and decision: Case 4 | <ul style="list-style-type: none"> • Case 4 Justices: Turn in Case 4 Bench Memoranda by start of class |

XII. LAW SCHOOL ATTENDANCE POLICY

Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school shall require regular and punctual class attendance. At any time after the fifth week of a course (halfway through a summer session course), a student who has been determined by the instructor to have attended fewer than 80 percent of the class sessions in any course will be required to drop the course from his or her registration upon the instructor's so indicating to the Academic Services Office. An instructor may also impose stricter attendance standards or other sanctions for nonattendance, including lowering of a grade, provided that students are informed at the start of the course of the instructor's attendance rules and possible sanctions.

XIII. ACCESS AND ACCOMMODATION

If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs in this course. If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructor, and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

XIV. RELIGIOUS ACCOMMODATIONS

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. Accommodations must be requested within the first two weeks of this course using the Religious Accommodations Request form available at <https://registrar.washington.edu/students/religious-accommodations-request/>.