“It is emphatically the province and duty of the judicial department to say what the law is.”

This course is designed to familiarize you, the dutiful student, with Supreme Court policy making in the form of the Court’s written opinions. The Supreme Court, the highest judicial institution in the United States, makes decisions that affect the lives of people all over the country. In this course, I hope to promote an understanding and appreciation of the profound influence the Supreme Court has on life as we know and love it today, as well as to convey the very political nature of this institution. All too often, we Americans subscribe to the myth which surrounds this highest of legal institutions, shrouding it in the “cult of the robe,” placing its justices above politics and above the “humanness” of humanity. However true that may be in theory, since the creation of the High Court was indeed a means to check popular control of government, it is not true in reality. Politics plays an everyday role in the functioning of the Supreme Court, evidenced by the occasional ruckus surrounding a Supreme Court nomination, or picketing outside the Court over an unpopular opinion, or political mobilization over a Constitutional amendment to overrule a Court decision. Politics is present on the Court, both in the outside forces that hope to influence it, and in the internally-held policy preferences of its justices. Even the Constitution is not without controversy, as it is an extremely vaguely written document, able to be convincingly construed in any number of ways. Hence the many conflicting opinions written by the justices themselves, charged to make sense of our forefathers’ legacy.

In this course, then, you will read many opinions written by these Supreme Court justices, both the majority opinions and the accompanying disagreements (dissents and concurrences). This task will seem daunting at first, almost like learning a foreign language, but by the end of the semester, you’ll be a pro! Note that we will consider many controversial issues in this course that raise the hackles of many, so be prepared to do so in an open-minded, civil manner. After all, the justices disagree all the time, in writing, and yet, by all accounts, still get along (even if they do engage, occasionally, in a little high-brow name-calling…)

**REQUIRED TEXT**

Epstein, Lee and Thomas G. Walker. 2016. *Constitutional Law for a Changing America: Rights, Liberties, and Justice*. 9th ed. Washington, DC: Congressional Quarterly Press. (An earlier edition may be acceptable, but it is up to you to be sure you’re completing the correct reading assignments.)
**ALSO REQUIRED**

This course has an affiliated CANVAS site ([https://uwm.edu/canvas/](https://uwm.edu/canvas/)), which we’ll use to turn in assignments and disseminate course materials. You should take any actions necessary to secure access to this website immediately. If you have any problems accessing the course site or any questions regarding the performance of CANVAS, you should contact the University Help Desk (229-4040) or try to answer your question yourself on line – CANVAS has amazing help support, available right on your dashboard.

**A CAVEAT: Professionalism**

One note before addressing course requirements and required readings: you will be expected to behave professionally in this class. That is to say, you will be expected to complete assignments on time and to carefully and thoughtfully complete all required reading. You will actively participate in class in a constructive and literate way. I will not tolerate students who do not put forth every effort. **Late work will not be accepted nor will make-up exams be given** unless there is a major and substantiated complication which prevents completion, of which I am aware immediately and prior to the scheduled exam or due date of the assignment. The determination about whether or not it is “major and substantiated” will be made solely at the discretion of the instructor. I know all the excuses, so please do not test me. Do note that full documentation of illness or death in the family is necessary for extensions/make-ups. Again, I require notification BEFORE the missed assignment/quiz unless that is impossible due to documented emergency. Sincerely-held religious beliefs are exempt from the documentation policy, though I still require advance notification of absence/conflict with a religious observance. When in doubt, talk to me after class or in my office hours, or send me an email.

**ACADEMIC INTEGRITY**

**No form of academic dishonesty will be tolerated in this class.** Anyone found guilty of cheating or plagiarism or of any other violation of academic integrity will be assigned an automatic grade of F IN THE COURSE and will be prosecuted to the fullest extent through University channels. Notes on plagiarism can be found here [http://www.indiana.edu/~wts/pamphlets/plagiarism.shtml](http://www.indiana.edu/~wts/pamphlets/plagiarism.shtml) and here [http://www.uwm.edu/Libraries/guides/style/plagiarism.html](http://www.uwm.edu/Libraries/guides/style/plagiarism.html). UWM's policy can be found here: [http://www4.uwm.edu/acad_aff/policy/academicmisconduct.cfm](http://www4.uwm.edu/acad_aff/policy/academicmisconduct.cfm). Be sure you know the definition and know how to avoid it. In fact, to be sure that you do, your first course assignment is to take and pass the plagiarism quiz at [https://www.indiana.edu/~istd/test.html](https://www.indiana.edu/~istd/test.html). (You can find a link to it on CANVAS.) As you may have already noticed, I am absolutely serious about this policy. It is indeed plagiarism to copy the justices’ words without citation or attribution or to copy the summary of a decision found on any of the various websites that provide them. **We will notice the plagiarism and you will fail the course.**

Consider this your ONLY warning.

I’m not completely mean: I do hope and expect that you really enjoy this class, enjoy the discussions we’ll have, enjoy the material you’ll read, and enjoy thinking about the issues we’ll raise! I just want to be clear that I’m serious, I expect a lot, and you need to be prepared to be diligent and work hard this semester! If you do that, this will be a great experience for all of us.
SPECIAL NEEDS

Any students with special needs due to a physical or learning disability should contact me as soon as possible. Every effort will be made to accommodate your needs.

WORK LOAD

This is a three-credit course, and as such you should average about nine hours of work per week to achieve the learning goals of this course (in addition to the 2.5 hours you will be in the classroom). Obviously, you will work more in some weeks than in others, but you should average about nine work hours per week.

OTHER UNIVERSITY POLICIES

Other University guidelines (including policies on sexual harassment, grade appeals, incompletes, and military call-ups) can be found here: http://www4.uwm.edu/secu/SyllabusLinks.pdf.

COURSE REQUIREMENTS AND GRADING

In an effort to spread out the material in response to past student comments, evaluation in this course will include three examinations. Each of these exams will be short answer/essay in nature (i.e., a set of hypothetical cases to which you’ll apply Supreme Court precedent). I will post a review sheet detailing the exam and the material covered on it (though that’s just a list of terms) when the exams approach and I will show you a sample question and a good answer to give you an idea of my expectations. The exams are worth progressively more to give you credit for learning how to take the exams.

[15% exam one; 20% exam two; 25% exam three]

In addition to these three exams, you will be expected to brief eight (8) cases over the course of the semester. You will be placed into one of eight groups, each of which will be responsible for briefing a set of cases spaced throughout the term as noted on the syllabus. All of the members must hand in a complete and unique brief (by 11:59pm on the day it was covered (which is not always the date listed on the syllabus), via CANVAS – it will be considered late and hence not accepted (without documentation and prior notice, as discussed above) if dropped any time after that or if dropped in a format that is unreadable, so don’t forget to submit your brief and be sure to use .doc, .docx, or .pdf file formats! Note that this end-of-the-day due date causes trouble sometimes as students forget to drop their briefs. It is designed to give you time to edit your brief after we cover your case in class. If you are prone to forgetting, upload it as soon as you finish it, and then upload and update if you desire/remember. We will grade the most recent, on-time brief submitted.)

Using the Socratic method, I will draw from briefers’ (and, occasionally, other members of the class’s, as noted below) knowledge of the case in presenting it in class. Note that it is NOT acceptable to use the Court’s syllabus or another website that summarizes the case as part of your brief. Copying anything from any source (including Supreme Court opinions themselves) without attribution is plagiarism. (See above for the consequences of plagiarism.) Several cases will be covered each day. The rest of the class will also be responsible for reading those cases presented by other groups before class, and it is suggested that you brief them all yourself as a study tool. Indeed, I may call on students outside the briefing groups in seeking out the facts or holding or a discussion of a dissent or concurrence of one of the day’s cases. Copies of a solid brief (written by me) will be placed on CANVAS for your use in studying, sometime after
the case is covered in class but before the next exam. Grades will be given for each brief (but see below), but the grading will be more lenient in the beginning as you become accustomed to the skill. **You can only receive AT BEST half credit for a brief you do not help present, so attend class on the days on which your groups’ case will be discussed and be prepared to contribute to its presentation.** (If you let me know, in advance, that you will not be in class on one of your scheduled dates for a valid reason, I can allow you to make up your presentation by helping another group brief its case. But, you must let me know in advance, with a documented excuse.) Note that either absence or a failure to be prepared when called on with both result in a half-credit deduction. **No points will be granted to a brief turned in late, even if you helped brief it in class. BUT, you may DROP the grade of your least successful brief, so only 7 briefs will count toward your grade.** (You may decide not to drop a brief, in which case your 8th can serve as extra credit, worth 3%.)

[5% each for seven graded briefs = 35% total]

You may have noticed that the points here mentioned total 95%. The remaining 5% are assigned to “participation,” which includes attendance, class participation on non-briefing days (both orally and on CANVAS), and level of preparation on briefing days. Do not take these five points lightly, as it could easily make the difference between an A and a B (or a D and an F, depending on the situation in which you find yourself). In order that I may fully measure this participation, assigned seats will be given during the second week of classes and attendance will be taken daily. **Do note that there is a very large and significant correlation between class attendance and class success!**

[5% total]

**GRADING SCALE**

The grading scale is as follows*:

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* The instructor reserves the right to curve grades, should the need present itself.

**READINGS**

The following is a list of topics to be covered at each class meeting and the readings (cases usually), which should be completed in order to fully participate in class that day. You should read the material listed for each session BEFORE coming to that particular session. (So, for Monday, you’ll read all the material listed as being covered on Monday, before you come to class that day.) All readings are from Epstein and Walker unless otherwise indicated. The cases listed under each day are those that will be covered that day. Again, this means you must read those cases before the class day on which they will be covered. (Skim any cases that are in Epstein and Walker but are not being covered in class.) Some cases will be covered solely by me and more briefly, as noted. Some of these cases are in your casebook, while others are not. For those that are not, I suggest you either go to the library and read the case from the United States Reports (KF101 .U51x), utilize Nexis Uni, which is available to you through the UWM Libraries Home Page (http://www.uwm.edu/Libraries/databases/), find the case on Findlaw.com, or (BEST OPTION) search
the case name on Google Scholar and then choose “Case law” from the pulldown menu on the left side. All briefing groups are expected to read the entire opinion including dissents and concurrences, not just the excerpted version found in the Epstein-Walker text. In addition, any direct quotes must be cited to the *United States Reports*, the official reporter of the U.S. Supreme Court. (Nexis Uni provides the U.S. Reports page number within the opinion after one asterisk; e.g., [*123] is page 123 in the U.S. Reports. FindLaw and Google Scholar also provide the U.S. citation, in FindLaw, embedded in the opinion in brackets in blue and in Google, on the side of the opinion and embedded within it with an asterisk.) Everyone else in the class should read at least the Epstein-Walker excerpt when available, and the majority opinion when not available, scanning the separate opinions to discern the justices’ reason for disagreement. Remember, you too may be called on for any given case. (Note that many of the cases NOT covered by the text ARE excerpted on the book’s companion website, to which you have access if you bought the book new. Given that we’re using an old edition (I plan to switch to the 10th edition next year), I will post those excerpted versions on CANVAS, though you may need to remind me to do so.)

**COURSE SCHEDULE**

While I give specific days on which certain topics will be covered, there is certainly flexibility in the schedule should the class find that a certain topic is particularly interesting, or the instructor finds that a given topic has not been satisfactorily addressed within the lecture or presentations for which it is scheduled. And, if the past is any indication, we will get behind because we will get carried away in some discussions, and that’s fine. **Be prepared to be flexible on your briefing dates.** Always be prepared to brief on the day listed, but know we may not make it to you. If you spot a scheduling problem, let me know that immediately and I can either switch your group permanently or give you permission to brief an alternate case with one of the other groups. We’re trying to cover the waterfront in civil rights and civil liberties here, but there is only so much we can do in one semester. I try, whenever possible, to at least draw your attention to the most current cases in the most important areas of law, but again, we’ll run out of time. Hopefully, you’ll find one of the special topics courses offered by the Department to be of interest sometime soon to dive more deeply into some of these fascinating topics. (I have taught Obscenity and the First Amendment, Civil Liberties in Times of Crisis, Campaign Finance, Law & Politics, and Freedom of Religion all under POL SCI 471, usually online.)

Some cases, to save us some time but still promote breadth of coverage, will be covered solely by me, as noted. For those, I will discuss the case briefly in class and relate it to the ones you are briefing, and then I’ll post at least a brief, which will contain some analysis of the case in the “Free Space” portion (more on this in the handout and discussion of case briefs).

With all that in mind, we have the following schedule for this term:

**WEDNESDAY, JANUARY 23**

*Introduction to the Course; Introduction to the Supreme Court*

**COVER:**
Syllabus (hard copy provided; electronic copy on CANVAS)
General Intro to the Supreme Court

TAKE & PASS THE INDIANA PLAGIARISM QUIZ; upload certificate to the PLAGIARISM assignment on CANVAS.
MONDAY, JANUARY 28

General Introduction to the Constitution of the United States and Supreme Court Decision Making; Incorporation – Making the Bill of Rights Apply to the States

COVER:
The Constitution of the United States (Appendix 1)
The Living Constitution
Chapter 1 (Understanding the Supreme Court)
Chapter 2 (The Judiciary: Institutional Powers and Constraints)

WEDNESDAY, JANUARY 30

The Judiciary: Institutional Powers and Constraints; Briefing Cases

COVER:
Chapter 3 (Incorporation of the Bill of Rights)
Briefing Cases (CONTENT on D2L)

MONDAY, FEBRUARY 4

The First Amendment – Freedom of Speech and Association

COVER:
Approaching Civil Liberties; Chapter 5 (Freedom of Speech, Assembly, and Association)


WEDNESDAY, FEBRUARY 6

Free Speech, cont.


MONDAY, FEBRUARY 11

Free Speech, cont.

**GROUP 7(1):** Snyder v. Phelps, 562 U.S. 443 (2011) Hate speech


WEDNESDAY, FEBRUARY 13

Obscenity

**COVER:** Chapter 7 (The Boundaries of Free Expression (Obscenity)), Chapter 8 (The First Amendment and the Internet)

**GROUP 2(2):** Miller v. California, 413 U.S. 15 (1973) Obscenity

MONDAY, FEBRUARY 18

Obscenity, cont.


WEDNESDAY, FEBRUARY 20

Libel & Review for Exam #1

**COVER:** Finish Chapter 7 (The Boundaries of Free Expression (Libel))

**CASES:**
**GROUP 7(2):** Near v. Minnesota, 283 U.S. 697 (1931) Libel

**PROFESSOR BENESH:** Gertz v. Welch, 418 U.S. 323 (1974) Libel

MONDAY, FEBRUARY 25

**EXAM #1**
WEDNESDAY, FEBRUARY 27

Free Press

COVER: Chapter 6 (Freedom of the Press)


MONDAY, MARCH 4

Free Press, cont. and Second Amendment

COVER: Chapter 9 (The Right to Keep and Bear Arms)


WEDNESDAY, MARCH 6

Privacy

COVER: Chapter 10 (The Right to Privacy)

GROUP 1(4): Roe v. Wade 410 U.S. 113, (1973) Abortion (Note: Concurrences are attached to Doe v. Bolton, 410 U.S. 179 (1973) – You need to include them.)

MONDAY, MARCH 11

Privacy, cont.


WEDNESDAY, MARCH 13

Privacy, cont.

**GROUP 6(4):** *Lawrence v. Texas, 539 U.S. 558 (2003)* Homosexual sodomy

**PROFESSOR BENESH:** *Gonzales v. Oregon, 546 U.S. 243 (2006)*

MONDAY, MARCH 18 – SUNDAY, MARCH 24

**SPRING BREAK! ENJOY!**

MONDAY, MARCH 25

Free Exercise

**COVER:** Chapter 4 (Religion: Exercise and Establishment)

**GROUP 7(4):** *Wisconsin v. Yoder, 406 U.S. 205 (1972)* Free Exercise (Education)  
**GROUP 8(4):** *Employment Division v. Smith, 494 U.S. 872 (1990)* Free Exercise (Peyote)  
**GROUP 1(5):** *City of Boerne v. Flores, 521 U.S. 507(1997)* Free Exercise (Building)


WEDNESDAY, MARCH 27

Establishment

**GROUP 2(5):** *Abington v. Schempp, 374 U.S. 203 (1963)* Establishment (Bible Reading)  
**GROUP 3(5):** *Van Orden v. Perry, 545 U.S. 677 (2005)* Public displays  
**GROUP 4(5):** *Edwards v. AgUILLARD, 482 U.S. 578 (1987)* Teaching Evolution

MONDAY, APRIL 1

Establishment, cont.

**GROUP 5(5):** *Lee v. Weisman, 505 U.S. 577 (1992)* Establishment (Prayer at graduation)  
**GROUP 6(5):** *Town of Greece v. Galloway, 572 U.S. ____ (2014)* Prayer before meetings

Search and Seizure & Review for Exam #2

**COVER:** The Criminal Justice System and Constitutional Rights, Chapter 11 (Investigations and Evidence (Searches and Seizures), pp 464-492)

**GROUP 7(5):** Mapp v. Ohio, 367 U.S. 643 (1961)
**GROUP 8(5):** New Jersey v. T.L.O., 469 U.S. 325 (1985)

**PROFESSOR BENESH:** U.S. v. Leon, 468 U.S. 897 (1968), Terry v. Ohio, 392 U.S. 1 (1968) Stop and frisk

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EXAM #2

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Search and Seizure, cont

**COVER:** Continue with Chapter 11 (Investigations and Evidence (Arrests and the Fourth Amendment, Self-Incrimination)


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Attorneys, Trials and Punishments

**COVER:** Chapter 12 (Attorneys, Trials, and Punishments)

**GROUP 3 (6):** Gideon v. Wainwright, 372 U.S. 355 (1963) Right to Atty


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WEDNESDAY, APRIL 17

Interrogation and Sentencing

**GROUP 6 (6):** Rhode Island v. Innis, 446 U.S. 291 (1980) Interrogation  


MONDAY, APRIL 22

Sentencing

**GROUP 3 (7):** Roper v. Simmons, 543 U.S. 551 (2005) Death Penalty

PROFESSOR BENESH: Moore v. TX (2017), Standards for intellectual disability

WEDNESDAY, APRIL 24

Racial Discrimination

**COVER:** Civil Rights and the Constitution, Chapter 13 (Discrimination (Race))

**GROUP 4 (7):** Plessy v. Ferguson, 163 U.S. 537 (1896) Separate but equal  
**GROUP 5 (7):** Sweatt v. Painter, 339 U.S. 629 (1950) Separate but equal  


MONDAY, APRIL 29

Racial Discrimination, cont. and Sex Discrimination

**COVER:** Chapter 13 (Discrimination (Sex))

**GROUP 7 (7):** Loving v. Virginia, 388 U.S. 1 (1967) Marriage  
**GROUP 8 (7):** Craig v. Boren, 429 U.S. 190 (1976) Drinking age  
**GROUP 1 (8):** United States v. Virginia, 518 U.S. 515 (1996) VMI

WEDNESDAY, MAY 1

Sexual Orientation Discrimination

**Group 2 (8):** Romer v. Evans, 517 U.S. 620 (1996) Sexual orientation discrimination

**Group 3 (8):** Obergefell v. Hodges, 135 S. Ct. 2071 (2015) Same Sex Marriage


MONDAY, MAY 6

Affirmative Action

**COVER:** Chapter 13 (Discrimination (Affirmative Action))


WEDNESDAY, MAY 8

Voting Rights & Review for Final

**COVER:** Chapter 14 (Voting and Representation)

**Group 6 (8):** SC v. Katzenbach, 383 U.S. 301 (1966)

**Group 7 (8):** Crawford v. Marion County, 553 U.S. 181 (2008)

**Group 8 (8):** Citizens United v. FEC, 130 S. Ct. 876 (2010)


THURSDAY, MAY 16

**EXAM #3**

12:30 – 2:30P