

FEDERAL COURTS

Professor Howard Wasserman
Office: RDB 2065
Phone: 348-7482
e-mail: howard.wasserman@fiu.edu

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11 a.m.-12:15 p.m., Monday/Tuesday
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Course Assignment Information

Oral Arguments

Forty (40) points from participation in Supreme Court appellate arguments as an advocate and a justice. I will assign each student one case to argue and one case to judge from a list I will distribute a few weeks into the semester; the list will include a lower-court decision and Question(s) Presented.

Each advocate will have 12 minutes (with no rebuttal). The advocate has one (1) minute uninterrupted, after which questions will begin.

Advocates will appear before a panel of three: two classmates and myself. One student will be designated as Chief Justice and will preside over the argument. We follow all formalities of Supreme Court arguments (calling cases, timing, dress, robes, etc.).¹

In preparing for arguments, you may review the briefs, cert. petitions, and arguments in the Supreme Court and in the lower courts (all can be obtained on Westlaw, SCOTUSBlog, the Supreme Court website, or other sites), although you should make the arguments your own. Advocates are expected to be prepared, familiar with the cases and materials, able to present organized arguments and to answer questions and hypotheticals from a potentially active bench. Justices are expected to be similarly prepared and familiar with the materials and able to engage in an active colloquy from the bench. I expect these arguments to sound less like moot-court competitions and more like actual court arguments.²

Arguments and questions should focus not only on the pure doctrine, but venture into the theoretical, policy, and normative principles underlying the law of federal courts and federal litigation. You are not bound by existing doctrine in arguing for a particular outcome (or in asking a particular question); this is the Supreme Court of the United States and you can argue first principles and existing doctrine, although you must make it clear that you know current doctrine and that you are arguing for the reversal, expansion, or modification of that doctrine. Evaluation will be based on how well you grasp and apply the concepts to the case at hand and how well you present your ideas in your arguments and in your questions from the bench. You are not bound by the way the lower court approached the case but should bring to bear everything from the course that may be of use in describing the case (e.g. if the lower court relied on one test for state action, you may apply a different test). In fact, you should be prepared to ask or answer questions relating to other areas of the course that might touch on the case.

The primary pedagogical goal of this exercise is to apply the jurisprudence, theory, policies, and principles of the law of federal courts and federal litigation to real-world situations, while forcing you to talk clearly and coherently about those principles and their application to real facts. By doing it in the “real time” of an argument (as opposed to on a written exam or essay), we can quickly challenge and correct anyone starting down a strange path. A secondary pedagogical benefit is to give you additional practice and experience standing up and engaging in oral advocacy.

¹ I will provide links to previous arguments.

² You can find and listen to SCOTUS arguments from this Term and prior Terms at and www.supremecourt.gov.

Regardless of your chosen career path, part of being a lawyer is speaking to groups and trying to explain and persuade listeners about factual and legal issues. Of course, these goals are achievable only if everyone is prepared and takes this project seriously.

Arguments will be held the day (or perhaps two days, depending on class size) after the end of exams. Please plan your vacation accordingly.

Class Participation

Thirty (30) points of your final grade will be based on class participation.

Given the apparent enrollment, everyone will serve on three panels. As a panelist, you are the first people to speak or be questioned and to lead the conversation. Your level of preparation should go beyond the norm on these topics.

Panelists should not and will not be the only ones prepared for class or participating, of course. I want and expect all members of the class to engage with the material and in the classroom conversations. Participation grades will be based on overall performance in the class discussion, both on your three panels and in the broader conversation throughout the semester.

Reaction Papers

One-hundred twenty (120) points will be based on three short reaction papers, worth forty (40) points each. Each paper will be a maximum of 1000 words.

Reaction papers tie to your assigned panels. You will write one paper on each of your assigned panels. Papers are due one week after a panel finishes. Each reaction paper must be on the just-completed panel. You may not write about another topic or issue that will arise later in the course. You may connect the current panel subject to something from earlier in the course, but the focus of the paper must be on the just-completed subject and how they connect. Your paper must be more than a summary of the class discussion; it must include some new or normative ideas or perspectives. It must relate to and discuss that portion of the course materials, although it can touch, where appropriate, on previously covered topics.

You can write about anything within a topic--what was discussed or not discussed in class and on the blog, including a short opinion dissenting in a particular case or suggesting how some doctrine might change; written analysis of (that is, how you would argue or resolve) any problems we cover in class; commentary on a recent case or news story that relates to the subject (I promise there are a lot of them); a mock opinion reviewing a recent case; or anything else within that area of the law of federal courts that you can think of and would like to write about. You may write about cases from the list of argued cases other than the ones you are assigned to argue or judge; if you do this, frame your essay as part of a SCOTUS opinion. Presume I know the facts of the case and spend your space discussing and applying the law (i.e., writing the legal part of the opinion).

Look for news sites, web sites, blogs, and social-media sites that report on and discuss new legal developments; this may be a great way to find some new cases, issues, or events to write about.

These should be short, although they must be vigorously and seriously written. Quality of argument and quality of writing count. Do not just tell me what you “think” or “feel.” Do not write as if you are publishing

something on Fox News or MSNBC. Do not simply summarize a case or area of law. Explain a problem and offer a solution that is grounded in the doctrine, theory, policy, and ideals we have been discussing in class. These may (and probably should) entail some extra research beyond the class reading.

Given the space limitations, zero-in on a precise issue or point and discuss it in-depth; that is preferable to skimming the surface on many different issues on a point.

Full citations are unnecessary. You can reference cases by a single name (and a court if not SCOTUS—*Smith* (9th Cir.)). You can reference rules and statutes by a section #--“§ ____” or “FRCP ____.” If discussing a case from the reading, go to the original source(s) rather than citing the discussion in the book.

Follow the writing and citation rules in the *Good Writing and Talking Procedure* post on the ***Blog***.

Your paper is due one week after we finish a panel. Papers must contain a separate cover sheet with your Blind ID #, the topic, and a word count (identifying the program used to generate the word count); do **not** put your ID number anywhere in the body of the paper other than that cover page. Papers must be double-spaced, single-sided, in 12-point Garamond, Times, or similar font. I will post papers to the ***Blog***, with the cover sheet removed.