

CALIFORNIA INSTITUTE OF TECHNOLOGY

L/H/PS 148a
The Supreme Court in U.S. History
Winter, 2008

Tue 7:30 PM, Baxter 125
Prof. J. Morgan Kousser
e-mail: kousser@hss.caltech.edu

SYLLABUS

Warning: Although I am happy to have in this class any student who accepts its challenges, I should warn you that **this is a demanding and intellectually rigorous course**. Each student must make two oral presentations and submit a paper on the topics of each of the oral presentations. Students will also have to prepare a brief on one of the excerpted cases every week or two, depending on the number of students in the class (more below). There will be no mid-term, but the 3-hour, closed-book, closed-notes, closed-everything-but-your-mind essay final will cover all the material assigned from the O'Brien casebooks, the assigned oral arguments, and anything said by me or your fellow students in class. While I encourage discussion of the topics and work of the class outside it, you should not get help on your papers without informing me. Supreme Court opinions are not easy going, and we're going to read a lot of them in a short time. Note, please that this course is ***NOT*** available on a Pass/Fail basis. You may take the winter term of this course whether or not you take the spring term (which will cover the First Amendment, privacy, and criminal procedure). But L.148a is a prerequisite for L.148b.

The only books assigned to everyone in the class are David M. O'Brien's *Constitutional Law & Politics*, both volumes, **sixth edition**, 2003, and his *Supreme Court Watch*, 2007, which is referred to below as "supp.," with the chapters corresponding to volumes I and II. In addition, each week you should listen to recordings of the assigned oral arguments, which are available at <http://www.oyez.org>. You can download a free copy of RealAudio to listen to each oral argument, and some are available in MP3 format. Some have transcripts, which are more convenient. But listening to the voices, stammers, hesitations, laughter, and muttering is more fun.

Date	Topic	Reading Assignment	Oral Argument
Jan.8	Judicial Review	Vol. II, Ch. 1	
Jan. 15	Input/Output	Vol. II, Ch. 2 & supp.	<i>Hein v. Freedom from Religion</i>
Jan. 22	Presidential Powers	Vol. I, ch. 3, and supp	<i>Boumediene v. Bush</i>
Jan. 29	Presidential Powers	Vol. I, Ch. 4	<i>Clinton v. City of NY</i>
Feb. 5	Economic Regulation, New Deal Crisis	Vol. I, Ch. 6 & supp.	<i>Heart of Atlanta v. U.S.</i>
Feb. 12	Federalism	Vol. I, Ch. 7	<i>Garcia v. SAMTA</i>
Feb. 19	Equal Protection	Vol. II, Ch. 12, pp. 1325-81	<i>Loving v. VA</i>
Feb. 26	Equal Protection	Vol. II, Ch. 12, Sections B & C	<i>Gratz</i>
Mar. 4	Equal Protection	Vol. II, Ch. 12, Section D	<i>San Antonio v. Rodriguez</i>
Mar. 11	Reapportionment, Voting Rights	Vol. I, Ch. 8, Sections A & B & Supp.	<i>Gomillion</i>

Briefs

Many students in this course have formed informal study groups in the past, sharing their notes on cases. To formalize this, I decided some years ago to assign students to write short briefs of each case we read in O'Brien. It has worked pretty well. Each week, I'll pass around a sheet with the names of each cases for the next week on it, and students will sequentially sign up. I'll try to make sure that no one is assigned too many or too few over the quarter. The briefs should be finished by **5 pm on Monday before the Tuesday class** and **emailed** (Word, WordPerfect, or Acrobat files) to my secretary, Sabrina Boschetti (sabrina@hss, or 111 Baxter), with a copy to me. So should the outlines for the book reports, described below. Sabrina will then print them out and put 3-hole punches in them. A set will be handed out to each student in class. You should buy a 3-ring binder to put them in. At the end of the course, everyone will have a complete set of briefs, which will be of great assistance in studying for the final exam. They will also be suitable keepsakes for the course.

Book Reports

Students learn best actively. The "book reports" will give you the chance to "adopt" one case and one judge, and to inform us all about them. Each student is to read **one book about a case and one biography** from the two lists below. For books about a case, I'd like you to focus on two things: the people or political issues involved, and the key legal issues in the Supreme Court decision or decisions. If the book discusses the long-term consequences of the case, please include that, as well. For biographies, tell us, if it is possible from the book, what made the person want to be a judge and what made them qualified to be a judge; what important opinions they wrote and what they said in some of those opinions; and what their lasting importance (if any) was. The case books for March 6 are different, because voting rights doesn't always lend itself to one-case treatments. For those books, focus on one or more cases. You should give an

abbreviated version of your paper as an oral report to the class, taking **no more than 15 minutes**. It has become customary (and now mandatory) for each oral report to be accompanied by **typed and photocopied outlines for the other class members**. The class may have questions to ask you, as I may. Be prepared. A week after the oral report, you should hand in to me a written report of about 8-10 double-spaced pages on the material. Write well; I read closely.

The following is a list of books, their call numbers, the number of pages in each book, and the week when the oral report should be presented:

Cases

KF4575.C554.1989	Robert L. Clinton, <i>Marbury vs. Madison & Judicial Review</i>	225 pp.	Jan. 15
JK1759.E37.2005	Richard Ellis, <i>To the Flag: The Unlikely History of the Pledge of Allegiance</i>	220 pp.	Jan. 15
KF5063.M5.1970	Samuel Klaus, ed., <i>The Milligan Case</i> (skip appendix)	250pp.	Jan. 22
KF224.N28.F57.2005	Louis Fisher, <i>Nazi Saboteurs on Trial</i>	300 pp.	Jan. 22
KF8745.C45.H95	Harold Hyman, <i>The Reconstruction of Salmon P. Chase: In Re Turner and Texas v. White</i>	170 pp.	Jan. 22
KF228.C43.C73.1988	Barbara Craig, <i>Chaddha: The Story of an Epic Constitutional Struggle</i>	250 pp.	Jan. 29
KF4558.2nd.C67.2006	Saul Cornell, <i>A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control</i>	220 pp.	Jan. 29
KF228.E54.D54.2007	Bruce J. Dierenfield, <i>The Battle over School Prayer: How Engel v. Vitale Changed America</i>	220 pp.	Jan. 29
KF4606.B38	Maurice Baxter, <i>The Steamboat Monopoly: Gibbons v. Ogden</i>	130 pp.	Feb. 5
KF228.L63.K46.1990	Paul Kens, <i>Judicial Power & Reform Politics: The Anatomy of Lochner v. N.Y.</i>	150 pp.	Feb. 5
KF228.S545.L33.2000	Ronald M. Labbe, <i>The Slaughterhouse Cases: Regulation, Reconstruction, and the 14th Amendment</i>	250 pp.	Feb. 5
KF3552.W6	Stephen B. Wood, <i>Constitutional Politics in the Progressive Era: Child Labor & the Law</i>	300 pp.	Feb. 5
KF224.M6.F7	Richard H. Frost, <i>The Mooney Case</i>	500 pp.	Feb. 5
KF224.H47.M3	Charles H. Martin, <i>The Angelo Herndon Case and Southern Justice</i>	215 pp.	Feb. 12

KF7224.5.J87.1989	Peter Irons, <i>Justice Delayed: The Record of the Japanese American Internment Cases</i>	400 pp.	Feb. 12
KF5640.A7.M87.2007	Kenneth W. Murchison, <i>The Snail Darter Case: TVA versus the Endangered Species Act</i>	200 pp.	Feb. 12
KF224.G75.J64.2005	John W. Johnson, <i>Griswold v. CT: Birth Control And the Constitutional Right of Privacy</i>	230 pp.	Feb. 12
KF4545.S5.F432	Don Ferenbacher, <i>Slavery, Law, & Politics: The Dred Scott Case</i>	300 pp.	Feb. 19
KF4545.S5.M35.2007	Earl Maltz, <i>Dred Scott and the Politics of Slavery</i>	150 pp.	Feb. 19
KF4545.S5.A948.2006	Austin Allen, <i>Origins of the Dred Scott Case</i>	230 pp.	Feb. 19
KF4757.L64.1987	Charles Lofgren, <i>The Plessy Case</i>	200 pp.	Feb. 19
KF224.S34.C3	Dan T. Carter, <i>Scottsboro</i>	415 pp.	Feb. 19
KF662.V5	Clement Vose, <i>Caucasians Only: The Supreme Court, The NAACP, and the Restrictive Covenant Cases</i>	250 pp.	Feb. 19
LC214.23.L56.U53.1999	Elizabeth Jacoway, <i>Understanding the Little Rock Crisis and</i>		
F419.L7.B3.1986	Daisy Bates, <i>The Long Shadow of Little Rock</i>	365 pp.	Feb. 26
KF224.M47.B35.204	Howard Ball, <i>Murder in Mississippi: U.S. v. Price and the Struggle for Civil Rights</i>	170 pp.	Feb. 26
KF4155.C68.2003	Robert Cottrol et al., <i>Brown v. Board</i>	250 pp.	Feb. 26
KF4155.R46.1992	Mark Whitman, ed., <i>Removing a Badge of Slavery The Record of Brown v. Board of Education</i>	345 pp.	Feb. 26
LC 214.23.C43.D68.1995	Davison M. Douglas, <i>Reading, Writing, and Race: The Desegregation of the Charlotte Schools</i>	250 pp.	Feb. 26
KF228.S9.S39.1986	Benjamin Schwartz, <i>Swann's Way: The School Busing Case and the Supreme Court</i>		Feb. 26
KF228.B34.B35.2000	Howard Ball, <i>The Bakke Case</i>	206 pp.	Feb. 26
KF228.J64.U758.1997	Melvin I. Urofsky, <i>Affirmative Action on Trial: Sex Discrimination in Johnson v. Santa Clara</i>	185 pp.	Mar. 4
KF4758.C63.2004	Augustus Cochran, <i>Sexual Harassment and the Law: The Mechelle Vinson Case</i>	220 pp.	Mar. 4
KF228.S553.Z45.2004	Charles L. Zelden, <i>The Battle for the Black Ballot: Smith v. Allwright and the Defeat of the Texas All-White Primary</i>	150 pp.	Mar. 11

- E185.93.m6.p37.1990 Frank R. Parker, *Black Votes Count: Political Empowerment in Mississippi after 1965* 210 pp. Mar. 11
- JK1929.A2.L3 Steven Lawson, *Black Ballots: Voting Rights in the South, 1944-69* 350 pp. Mar. 11
- (see me) Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* 245 pp. Mar. 11
- KF4905.P65.1990 Bernard Grofman, ed., *Political Gerrymandering and The Courts* (chapters 1-11) 250 pp. Mar. 11

Biographies

- KF8745.M3.J64.1997 Herbert A. Johnson, *The Chief Justiceship of John Marshall* 315 pp. Jan. 15
- KF8745.M3.N49.2001 R. Kent Newmyer, *John Marshall and the Heroic Age of the Supreme Court* (concentrate on pp. 146-385) Jan. 15
- KF8744.W5.HUM G. Edward White, *The American Judicial Tradition: Profiles of Leading American Judges* (compare several) 400 pp. Jan. 15
- KF8745.S83.N48.1985 R. Kent Newmyer, *S.Ct. Justice Joseph Story* 400 pp. Jan. 22
- KF4541.S73.2005 Stuart Streichler, *Justice Curtis in the Civil War Era* 270 pp. Jan. 22
- KF8745.M5.R67.2003 Michael Ross, *Justice of Shattered Dreams: Samuel Freeman Miller and the S.Ct. During the Civil War Era* 290 pp. Jan. 22
- E415.9.C4.N58.M25 John Niven, *Salmon P. Chase* 450 pp. Jan. 22
- E415.9.D25.K5.1976 Willard L. King, *Lincoln's Manager, David Davis* 380 pp. Jan. 29
- KF8745.S4.S776.1986 Daniel G. Strong, *Supreme Court Justice William Strong, 1808-1895* 425 pp. Jan. 29
- KF8745.F5.S9 Carl B. Swisher, *Stephen J. Field (1816-1899)* 470 pp. Feb. 5
- KF8745.C3.K38.1998 Andrew Kaufman, *Cardozo* (concentrate on pp. 455-578) Feb. 5
- KF8745.B67.S78.1984 Phillipa Strum, *Louis D. Brandeis* 400 pp. Feb. 5
- KF8745.T3.M3.1965 Alpheus T. Mason, *William Howard Taft* 305 pp. Feb. 5
- KF8745.M25.M3.1974 Matthew McDevitt, *Joseph McKenna (1843-1926)* 250 pp. Feb. 5

KF8745.H6.A66.2000 Albert Alschuler, *Law Without Values . . . Justice Holmes* 325 pp. Feb. 5

KF8745.S88.P3.1969 Joel F. Paschal, *Mr. Justice Sutherland, A Man Against The State* 270 pp. Feb. 12

KF8745.S8.M25 Alpheus T. Mason, *Harlan Fiske Stone*
(2 reports: split at p. 467) Feb.12

KF8745.R87.F47.2004 John M. Ferren, *Salt of the Earth, Conscience of the Court: . . . Wiley Rutledge (concentrate on SupCt years)* 550 pp. Feb. 12

KF373.J55.Y37 Tinsley Yarbrough, *Judge Frank Johnson & Human Rights in Alabama* 225 pp. Feb. 19

KF373.J87.K46.1991 Frank R. Kemerer, *William Wayne Justice* 400 pp. Feb. 19

KF8745.H3.P79.1999 Linda Przybyszewski, *The Republic According to John Marshall Harlan (on Court 1877-1911)* 200 pp. Feb. 19

KF8745.F7.U76.1991 Melvin Urofsky, *Felix Frankfurter* 179 pp. Feb. 19

KF8745.B55.B298.1996 Howard Ball, *Hugo L. Black* 251 pp. Feb. 19

KF8745.W3.W45.1982 Edward White, *Earl Warren* 370 pp. Feb. 19

KF8745.F65.K35.1990 Laura Kalman, *Abe Fortas* 400 pp. Feb. 19

KF8745.M8.H6 J. Woodford Howard, *Mr. Justice Murphy* 500 pp. Feb. 19

KF8745.T3.L4 Walker Lewis, *Without Fear or Favor, A Biography of Chief Justice Roger Brooke Taney* 500 pp. Feb. 19

KF373.W332.Y37.1987 Tinsley Yarbrough, *A Passion for Justice: J. Waites Waring & Civil Rights* 250 pp. Feb. 26

KF8745.P69.J44.1994 John C. Jeffries, Jr., *Justice Lewis F. Powell, Jr.*
(concentrate on pp. 222-562) Feb. 26

KF373.H644.M3.1983 Genna McNeil, *Groundwork: Charles Hamilton Houston & The Struggle for Civil Rights* 225 pp. Feb. 26

KF8745.W3.S37.1983 Bernard Schwartz, *Super Chief: Earl Warren and His Supreme Court* (2 reports, split at 336) Feb. 26

KF8745.B68.M37.1997 David E. Marion, *The Jurisprudence of William J. Brennan, Jr.* 175 pp. Feb. 26

KF4755.M34. T87.1997 Mark Tushnet, *Making Constitutional Law: Thurgood Marshall and the Supreme Court, 1961-1991* 200 pp. Feb. 26

KF373.H38.W37.1984 Gilbert Ware, *William Hastie* 250 pp. Feb. 26

KF8745.S33	Richard Brisbin, <i>Justice Antonin Scalia and the Conservative Revival</i>	347 pp. Mar. 4
KF213.S66.S56.1988	Robert Sickels, <i>John Paul Stevens and the Constitution</i>	175 pp. Mar. 4
KF8745.O25.B57.2005	Joan Biskupic, <i>Sandra Day O'Connor</i>	400 pp. Mar. 4
KF8745.S68.Y37.2005	Tinsley Yarbrough, <i>David Hackett Souter</i>	300 pp. Mar. 4
KF8745.T48.M47.2007	Kevin Merida and Michael A. Fletcher, <i>Supreme Discomfort: The Divided Soul of Clarence Thomas</i>	380 pp. Mar. 11