

Syllabus For

CONSTITUTIONAL LAW SEMINAR: LEADING CASES IN CONTEXT

(Course No. 6399-10; 2 credits)

Justice Clarence Thomas  
Judge Gregory E. Maggs

Description of the Seminar:

Most constitutional law courses focus almost exclusively on judicial opinions in leading Supreme Court cases. Reading judicial opinions is essential for learning and understanding the law. But judicial opinions by themselves usually reveal only part of a complex story behind a constitutional lawsuit. Although judicial opinions discuss the facts immediately leading to the litigated issues, they typically do not fully expose the motivations of the parties or the social and political context of a legal controversy. Judicial opinions also cannot reveal what happened after they were announced, such as how the public reacted to them or how they influenced subsequent decisions.

Discovery of additional facts about Supreme Court cases, beyond those given in judicial opinions, is invariably interesting to anyone curious about legal history. Additional facts also often yield a deeper or different understanding of the Court's actions. In this seminar, we will observe these phenomena by studying more complete stories of leading constitutional cases than are usually presented in Constitutional Law courses. The seminar will culminate with each student writing and presenting a thorough history of a different Supreme Court decision.

Learning Outcomes (ABA Accreditation Standards 301 & 302):

Syllabus Appendix D identifies the expected "learning outcomes" for this course.

Class Schedule:

The seminar will meet at the Law School on Thursdays from

3:50-5:50 p.m. If conditions permit, we may hold one class session at the Supreme Court.

GW Law Web Portal:

This course has a page on the GW Law Web Portal (accessible through <https://my.law.gwu.edu>). On this page, you can find announcements, assigned readings, and other materials.

Office Hours, Email, Telephone:

Judge Maggs will hold office hours by appointment. To schedule a time to speak, please contact his assistant, Ms. Veronica Sevier at [veronica.sevier@armfor.uscourts.gov](mailto:veronica.sevier@armfor.uscourts.gov).

Required Books and Supplemental Readings:

We will use this textbook: Constitutional Law Stories (Michael C. Dorf ed., 2d ed. 2009) (ISBN 978-1599411699) (printed or electronic format).

In addition, you will need to download and read edited Supreme Court opinions and other materials from the portal.

Assignments:

All students must (1) co-lead the discussion of one of the weekly reading assignments, (2) participate weekly in the discussion of all the assigned readings, (3) write an original essay concerning the full story behind a different Supreme Court case on a constitutional law issue, (4) make a presentation of their research to the class, and (5) provide one written suggestion for improvement for the paper each of the other students presents in class.

As described more fully below, the goal in writing the essay is to uncover and then tell a more complete story about the parties and the context of the litigation than is typically presented in a judicial opinion.

Students must select and obtain approval for their case selection by the fourth class session, Thursday, September 23, 2021. The final version of the research paper is due on Friday, December 17, 2021, by 5:00 p.m. Please submit your paper by email to Judge Maggs at [gmaggs@law.gwu.edu](mailto:gmaggs@law.gwu.edu).

The research paper must be 6,000-10,000 words in length, including footnotes. Papers that are at least 8,000 words long and earn a B- or higher will satisfy the upper level writing requirement. Please see the Law School Bulletin for the complete rules regarding the upper level writing requirement.

Grading Criteria:

Grades in the course will be determined according to the following criteria:

1. Case selection. Appendix A provides advice on case selection. Factors in assessing case selection include timeliness (all students must select and obtain approvals for their cases before the fourth class session) and thorough research to make sure that no one else has already written about the selected case. [5%]
2. Quality of the description of the factual context of the case. Factors in assessing the quality include completeness (i.e., whether the essay adequately describes who, what, why, where, when, how, etc.), selectivity in presentation, and storytelling ability. [10%]
3. Quality of the description of the legal context of the case (i.e., whether the essay covers what the reader needs to know about the law at the time of the litigation to understand the case). [10%]
4. Quality of the description of the path of the litigation from the filing of the lawsuit to the judgment of the Supreme Court. [10%]
5. Quality of the description of the consequences of the case, including its impact on the law, the people immediately involved, and other people. [10%]
6. Development and exposition of a theory for why knowing the whole story of the case, and not just what is in the reported opinion (or what is commonly taught about the case in law school) may be valuable. [10%]
7. Originality of the research. It is very important to go beyond what is in the opinions and briefs and published secondary sources on the case. The goal is to write an essay that contains enough new information that the essay could be published. [15%]

8. Writing style, tone, diction, grammar, citations, proofreading, etc. [15%]
9. Class participation, quality of presentation, complying with deadlines, word lengths, etc. [15%]

We will discuss these criteria in class so that you have a better understanding of them. In addition, as we read the assigned essays in our first nine class sessions, consider whether the authors told the stories of their cases well and how they might have improved their essays. The most common error is to focus overly on criticizing the reasoning of the majority and dissenting opinions; the focus should be on uncovering and telling the story of the case.

Appendix A to this syllabus provides guidance on selecting a case to write about. Appendix B provides research tips for discovering more about the history of a case.

#### Class Schedule and Reading Assignments:

Please read and come to class prepared to discuss the reading assigned below. The reading consists of chapters of the Constitutional Law Stories textbook and supplemental materials. The goals of the reading assignments are to learn about important cases and about the process of writing case histories.

Justice Thomas and Judge Maggs will lead the discussion on the first day of class. Designated groups of students will lead the discussion in subsequent classes. All students must participate in all class discussions.

WEEK #1 (Thursday, 9/2)

Marbury v. Madison (on portal)

Michael W. McConnell, "The Story of Marbury v. Madison: Making Defeat Look Like Victory," in Constitutional Law Stories at 13-31 (link to a copy also available on portal)

Justice Clarence Thomas, The Fallibility of Judging, N.Y. L.J. (Jun. 2, 2015) (on portal)

Syllabus Appendices A, B, & C

WEEK #2 (Thursday, 9/9)

McCulloch v. Maryland (on portal)

Daniel A. Farber, "The Story of McCulloch: Banking on National Power," in Constitutional Law Stories at 33-67

Letter to the Editor from "Amphictyon" (Judge William Brockenbrough), Richmond Enquirer, Apr. 2, 1819 (on portal)

Letter to the Editor from "A Friend to the Union" (Chief Justice John Marshall), Philadelphia Union, Apr. 28, 1819 (on portal)

WEEK #3 (Thursday, 9/16)\*

Wickard v. Filburn (on portal)

Jim Chen, "The Story of Wickard v. Filburn: Agriculture, Aggregation, and Commerce," in Constitutional Law Stories at 69-109

Power to Regulate, N.Y. Times, Nov. 13, 1942, at 22 (link on portal)

WEEK #4 (Thursday, 9/23)\*

Lochner v. New York (on portal)

David E. Bernstein, "The Story of Lochner v. New York: Impediment to the Growth of the Regulatory State," in Constitutional Law Stories at 299-331

Edward Marshall, Bread and Filth Cooked Together, N.Y. Press, Sept. 30, 1894, sec. 4, at 1 (on portal)

Howard Gillman, De-Lochnerizing Lochner, 85 B.U. L. Rev. 859 (2005) (link on portal)

WEEK #5 (Thursday, 9/30)

Korematsu v. United States (on portal)

Ex parte Endo (on portal)

Neil Gotanda, "The Story of Korematsu: The Japanese-American Cases," in Constitutional Law Stories at 231-269

Record of Korematsu v. United States, pp. 1-16, 19-25, 33-64 (on portal)

Brief for the United States, pp. 11-18 (on portal)

Supreme Court Upholds Return of Loyal Japanese to West Coast, N.Y. Times, Dec. 19, 1944, at 1 (link on portal)

WEEK #6 (Thursday, 10/7)

Baker v. Carr (on portal)

Stephen Ansolabehere & Samuel Issacharoff, "The Story of Baker v. Carr," in Constitutional Law Stories at 271-298

WEEK #7 (Thursday, 10/14)

Reid v. Covert (on portal)

Brittany Warren, The Case of the Murdering Wives: Reid v. Covert and the Complicated Question of Civilians and Courts-Martial, 212 Mil. L. Rev. 133 (2012) (link on portal)

WEEK #8 (Thursday, 10/21)\*

Plessy v. Ferguson (on portal)

Michael Kent Curtis, Albion Tourgée: Remembering Plessy's Lawyer on the 100th Anniversary of Plessy v. Ferguson, 13 Const. Comment. 187 (1996) (link on portal)

Justice Clarence Thomas, Remarks on Plessy v. Ferguson at the 1997 annual meeting of the Supreme Court Historical Society (link to C-SPAN video on the portal).

Andrew Novak, Courtroom to Classroom: Justice Harlan's Lectures at George Washington University Law School, 30

Journal of Supreme Court History 211 (2005) (link on portal)

Albion Tourgée, *A Fool's Errand by One of the Fools* 7-20 (1883) (on portal)

WEEK #9 (Thursday, 10/28)

Tinker v. Des Moines Independent Community School District (on portal)

Sean M. Sherman, Eckhardt v. Des Moines: The Apex of Student Rights, 88 Geo. Wash. L. Rev. Arguendo 115 (2020) (on portal)

Greer v. Spock (on portal)

Andrew J. Smith, The Supreme Court's About-Face in Greer v. Spock, 2020-3 Army Lawyer 54

WEEKS ## 10-13 (Thursday, 11/4, 11/11, 11/18, & 12/2)

On each of these four days, students will be assigned to make presentations. Each presentation should be about 20 minutes in length. Ideally, each presenter will speak for 10-12 minutes and then answer questions for 8-10 minutes.

By the Friday before class, each presenter will distribute to the other members of the class a draft of his or her essay and an edited version of the case (5-7 pages). The other members of the class must read these items and come prepared to ask questions and make comments. In advance of class, each student in the class also must send one written comment (copying Judge Maggs) to each of the students presenting a paper.

## Appendix A -- Selecting Your Supreme Court Case

By the fourth class session, you must select and obtain approval for the Supreme Court case on constitutional law that you will write about. Send Professor Maggs an email with the following information:

1. The complete name and citation of your proposed Supreme Court case.
2. A short statement of the central constitutional law issue involved in the case.
3. A short explanation of the research that you have done to make sure that no one else has already written a thorough story of the case.

Selecting an appropriate case is a central part of this course. The task is difficult and will take considerable time. In choosing a case, you should think ahead about all the grading criteria identified in this syllabus. You want to find an interesting case that will allow you to make a strong contribution through original research. Accordingly, you must undertake preliminary research before deciding which case to write about.

There are four key limitations on your case selection. First, you must select a case that involves a constitutional law issue. Second, you may not select any case decided after 1991 when Justice Thomas joined the Supreme Court. Third, you generally may not write about a case for which a published story already exists unless you plan to add significant new information. (Please let us know if you have found a source that already addresses the case). Fourth, please do not choose a case covered by students in previous years (see the list below).

In researching whether someone already has written a story about a case, make sure you look for articles, books, and book chapters. You can search for articles on Westlaw and for books in library catalogs and at Amazon.com and Google Books. Often you can find stories by searching for the case name in the title of books or articles or near the words "story" or "history." Another very successful approach is to search not only for a case name but also for facts such as the names of persons and places that are mentioned in the Supreme Court opinion and lower court opinions. Sometimes you can find a name, like that of a spouse or lawyer or hometown, that would likely appear in a story about the case but that probably would not appear in a

## Appendix A -- Selecting Your Supreme Court Case

doctrinal article about the Supreme Court's decision.

Some of you may be disappointed to discover that an author has already written extensively about a case in which you have a particular interest. In this situation, you might consider writing instead about a precedent cited in the case or about a subsequent decision that relies on the case. Often the stories behind these other decisions are very interesting and reveal important context for understanding the leading case.

Please do not select any of the following cases because students in previous years have already written thorough papers about them and your instructors would like to learn the stories behind other cases:

A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935)	Barron v. Baltimore, 32 U.S. (7 Pet.) 243 (1833)
Adderly v. Florida, 385 U.S. 39 (1966)	Bearden v. Georgia, 461 U.S. 660 (1983)
Adkins v. Children's Hospital, 261 U.S. 525 (1923)	Bethel School District v. Fraser, 478 U.S. 675 (1986)
Adler v. Board of Education, 342 U.S. 485 (1952)	Bigelow v. Virginia, 421 U.S. 809 (1975)
Aguilar v. Felton, 473 U.S. 402 (1985)	Board of Estimate of City of New York v. Morris, 489 U.S. 688 (1989)
Allen v. Wright, 468 U.S. 737 (1984)	Bob-Lo Excursions v. Michigan, 333 U.S. 28 (1948)
Anderson v. Dunn, 19 U.S. (6 Wheat.) 204 (1821)	Bolling v. Sharpe, 347 U.S. 497 (1954)
Apodaca v. Oregon, 406 U.S. 404 (1972)	Bowen v. Kendrick, 487 U.S. 589 (1988)
Arlington Heights v. Metro. Hous. Dev. Corp., 429 U. S. 252 (1977)	Bowers v. Hardwick, 478 U.S. 186 (1986)
Ashe v. Swenson, 397 U.S. 436 (1970)	Boynton v. Virginia, 364 U.S. 454 (1960)
Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936)	Bradwell v. State of Illinois, 83 U.S. 130 (1873)
Bailey v. Alabama, 211 U.S. 452 (1908)	Brandenburg v. Ohio, 395 U.S. 444 (1969)
Baldwin v. Fish & Game, 436 U.S. 371 (1978)	Branzburg v. Hayes, 408 U.S. 665 (1972)
Balzac v. Porto Rico, 258 U.S. 298 (1922)	Braunfeld v. Brown, 366 U.S. 599 (1961)
Barenblatt v. United States, 360 U.S. 109 (1959)	Brewer v. Williams, 430 U.S. 387 (1977)

## Appendix A -- Selecting Your Supreme Court Case

Afroyim v. Rusk, 387 U.S. 253  
(1967)

Brown v. Glines, 444 U.S. 348  
(1980)

Brown v. United States, 263 U.S. 78  
(1923)

Buck v. Bell, 274 U.S. 200 (1927)

Carey v. Population Services  
International, 431 U.S. 678  
(1977)

Carey v. Population Servs. Int'l,  
431 U.S. 678 (1977)

Castaneda v. Partida, 430 U.S. 482  
(1977)

Chambers v. Florida, 309 U.S. 227  
(1940)

Champion v. Ames, 188 U.S. 321  
(1902)

Chicago Railroad v. Chicago, 166  
U.S. 226 (1897)

City of New Orleans v. Dukes, 427  
U.S. 297 (1976)

City of Philadelphia v. New Jersey,  
437 U.S. 617 (1978)

Coates v. Cincinnati, 402 U.S. 611  
(1971)

Cohen v. California, 403 U.S. 15  
(1971)

Coleman v. Miller, 307 U.S. 433  
(1939)

Connick v. Myers, 461 U.S. 138  
(1983)

Costello v. United States, 350 U.S.  
359 (1956)

County of Allegheny v. ACLU, 492  
U.S. 573 (1989)

Cox v. Louisiana, 379 U.S. 536  
(1965)

Craig v. Boren, 429 U.S. 190 (1976)

Cruzan v. Director, Missouri Dep't  
of Health, 497 U.S. 261 (1990)

Debs v. United States, 249 U.S. 211  
(1919)

Department of Agriculture v.  
Moreno, 413 U.S. 528 (1973)

Dirk De Jonge v. State of Oregon,  
299 U.S. 353 (1937)

Dorr v. United States, 195 U.S. 138  
(1904)

Durren v. Missouri, 439 U.S. 357  
(1979)

Edwards v. South Carolina, 372 U.S.  
229 (1963)

Feres v. United States, 340 U.S.  
135 (1950)

First National Bank of Boston v.  
Bellotti, 435 U.S. 765 (1978)

Fisher v. Hurst, 333 U.S. 147  
(1948)

Flast v. Cohen, 392 U.S. 83 (1968)

Fong Yue Ting v. United States, 149  
U.S. 698 (1893)

Francis v. United States, 188 U.S.  
375 (1902)

Frisbie v. Collins, 342 U.S. 519  
(1952)

Goesaert v. Cleary, 335 U.S. 464  
(1948)

Goldfarb v. Virginia State Bar, 421  
U.S. 773 (1975)

Goldstein v. California, 412 U.S.  
546 (1973)

Gooding v. Wilson, 405 U.S. 518  
(1972)

Gorin v. United States, 312 U.S. 19  
(1941)

Gravel v. United States, 408 U.S.  
606 (1972)

Greene v. McElroy, 360 U.S. 474  
(1959)

Greer v. Spock, 424 U.S. 828 (1976)

Griffin v. Illinois, 351 U.S. 12  
(1956)

Hamilton v. Kentucky Distilleries,  
251 U.S. 146 (1919)

Harper & Row v. Nation Entrs., 471  
U.S. 539 (1985)

Hawke v. Smith, 253 U.S. 221 (1920)

Heath v. Alabama, 474 U.S. 82  
(1985)

Helvering v. Davis, 301 U.S. 619  
(1937)

Hepburn v. Griswold, 75 U.S. 603

## Appendix A -- Selecting Your Supreme Court Case

(1870)  
Holden v. Hardy, 169 U.S. 366  
(1898)  
Honig v. Doe, 484 U.S. 305 (1988)  
Houchins v. KQED, Inc., 438 U.S. 1  
(1978)  
Hoyt v. Florida, 386 U.S. 57 (1961)  
Hughes v. Oklahoma, 441 U.S. 322  
(1979)  
Hustler Magazine, Inc. v. Falwell,  
485 U.S. 46 (1988)  
In re Gault, 387 U.S. 1 (1967)  
In re Griffiths, 413 U.S. 717  
(1973)  
In re Neagle, 135 U.S. 1 (1890)  
Ingraham v. Wright, 430 U.S. 651  
(1977)  
International Shoe Co. v.  
Washington, 326 U.S. 310 (1945)  
Island Trees School District v.  
Pico, 457 U.S. 853 (1982)  
Jacobellis v. Ohio, 378 U.S. 184  
(1964)  
James Everard's Breweries v. Day,  
265 U.S. 545 (1924)  
Jay Burns Baking v. Bryan, 264 U.S.  
504 (1924)  
Johnson v. Robison, 415 U.S. 361  
(1974)  
Joseph Burstyn, Inc. v. Wilson, 343  
U.S. 495 (1952)  
Kawakita v. United States, 343 U.S.  
717 (1952)  
Kennedy v. Mendoza-Martinez, 372  
U.S. 144 (1963)  
Kent v. Dulles, 357 U.S. 116 (1958)  
Ker v. Illinois, 119 U.S. 436  
(1886)  
Kidd v. Pearson, 128 U.S. 1 (1888)  
Kilbourn v. Thompson, 103 U.S. 168  
(1881)  
Kovacs v. Cooper, 336 U.S. 77  
(1949)  
Lamont v. Postmaster General, 381  
U.S. 301 (1965)  
Lanza v. New York, 370 U.S. 139  
(1961)  
Late Corporation of the Church of  
Jesus Christ of Latter-Day Saints  
v. United States, 136 U.S. 1  
(1890)  
Leser v. Garnett, 258 U.S. 130  
(1922)  
Levy v. Louisiana, 391 U.S. 68  
(1968)  
Lockett v. Ohio, 438 U.S. 586  
(1978)  
Lujan v. Nat'l Wildlife Fed., 504  
U.S. 555 (1992)  
Maher v. Roe, 432 U.S. 464 (1977)  
Maine v. Taylor, 477 U.S. 131  
(1986)  
Malinski v. New York, 324 U.S. 401  
(1945)  
Marsh v. Chambers, 463 U.S. 783,  
787 (1983)  
Martin v. Hunter's Lessee, 14 U.S.  
304 (1816)  
Maryland v. Garrison, 480 U.S. 79  
(1987)  
Mattox v. United States 156 U.S.  
237 (1895)  
McDaniel v. Paty, 435 U.S. 618  
(1978)  
McGowan v. Maryland, 366 U.S. 420  
(1961)  
McGrain v. Daugherty, 273 U.S. 135  
(1927)  
McMillan v. Pennsylvania, 477 U.S.  
79 (1986)  
Metropolitan Washington Airports  
Authority v. Citizens for  
Abatement of Aircraft Noise,  
Inc., 501 U.S. 252 (1991)  
Miami Herald Pub. Co. v. Tornillo,  
418 U.S. 241 (1974)  
Michael H. v. Gerald D., 491 U.S.  
110 (1989)  
Mississippi University for Women v.  
Hogan, 458 U.S. 718 (1982)  
Mistretta v. United States, 488  
U.S. 361 (1989)  
Moyer v. Peabody, 212 U.S. 78

## Appendix A -- Selecting Your Supreme Court Case

(1909)  
Nardone v. United States, 308 U.S. 338 (1939)  
NCAA v. Board of Regents of the Univ. of Oklahoma, 468 U.S. 85 (1984)  
NCAA v. Tarkanian, 488 U.S. 179 (1988)  
New Jersey v. T.L.O., 469 U.S. 325 (1985)  
New York City Transit Authority v. Beazer, 440 U.S. 568 (1979)  
Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968)  
Nixon v. Admin. General Servs., 433 U.S. 425 (1977)  
NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937)  
Nollan v. Calif. Coastal Water, 483 U.S. 825 (1987)  
Olmstead v. United States, 277 U.S. 438 (1928)  
O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987)  
Opp Cotton Mills v. Admin., 312 U.S. 126 (1941)  
Palmer v. Thompson, 403 U.S. 217 (1971)  
Parker v. Brown, 317 U.S. 341 (U.S. 1943)  
Payton v. New York, 445 U.S. 573 (1980)  
Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978)  
Perez v. Brownell, 356 U.S. 44 (1958)  
Ping v. United States, 130 U.S. 581 (1889)  
Pocket Veto Case, 279 U.S. 655 (1929)  
Pollock v. Farmers' Loan, 157 U.S. 429 (1895)  
Proffitt v. Wainwright, 428 U.S. 242 (1976)  
Public Utilities Commission v. Pollak, 343 U.S. 451 (1952)  
Reed v. Reed, 404 U.S. 71 (1971)  
Regents of the University of California v. Bakke, 438 U.S. 265 (1978)  
Reid v. Covert, 354 U.S. 1 (1957)  
Reynolds v. United States, 98 U.S. (8 Otto.) 145 (1878)  
Roberts v. U.S. Jaycees, 468 U.S. 609 (1984)  
Scales v. United States, 367 U.S. 203 (1961)  
Schenck v. United States, 249 U.S. 47 (1919)  
Schlesinger v. Holtzman, 414 U.S. 1321 (1973)  
Schneider v. New Jersey, 308 U.S. 147 (1939)  
Smith v. California, 361 U.S. 147 (1959)  
Smith v. Goguen, 415 U.S. 566 (1974)  
Solorio v. United States, 483 U.S. 435, 440 (1987)  
Sorrells v. United States, 287 U.S. 435 (1932)  
Spence v. Washington, 418 U.S. 405, 406 (1974)  
Stanton v. Stanton, 421 U.S. 7 (1975)  
Strickland v. Washington, 466 U.S. 668 (1984)  
Swift & Co. v. United States, 196 U.S. 375 (1905)  
Taylor v. Louisiana, 419 U.S. 522 (1975)  
Texas v. White, 74 U.S. 700 (1869)  
Texas White Primaries Cases [several citations]  
The Civil Rights Cases, 109 U.S. 3 (1883)  
The Prize Cases, 67 U.S. 635 (1863)  
The Selective Draft Law Cases, 245 U.S. 366 (1918)  
Thomas v. Review Board, 450 U.S. 707 (1980)  
Tinker v. Des Moines Ind. Community

## Appendix A -- Selecting Your Supreme Court Case

School Dist., 393 U.S. 503 (1969)  
Toledo v. Pearson Yacht Leasing,  
416 U.S. 663 (1974)  
Torcaso v. Watkins, 367 U.S. 488  
(1961)  
Trop v. Dulles, 356 U.S. 86 (1958)  
Two Guys v. McGinley, 366 U.S. 582  
(1961)  
United States v. Robel, 389 U.S. 258  
(1967)  
United States v. Causby, 328 U.S.  
256 (1946)  
United States v. Karo, 468 U.S. 705  
(1984)  
United States v. Klein, 80 U.S. (13  
Wall.) 128 (1871)  
United States v. Lovett, 328 U.S.  
303 (1946)  
United States v. O'Brien, 391 U.S.  
367 (1968)  
United States v. Pink, 315 U.S. 203  
(1942)  
United States v. Sullivan, 274 U.S.  
259 (1927)  
United States v. Verdugo-Urquidez,  
494 U.S. 259 (1990)  
United States v. Wong Kim Ark, 169  
U.S. 649 (1898)  
Valentine v Chrestensen, 316 U.S.  
52 (1942)  
Vasquez v. Hillary, 474 U.S. 254  
(1986)  
Walker v. City of Birmingham, 388  
U.S. 307 (1967)  
Watkins v. United States, 354 U.S.  
178 (1957)  
West Coast Hotel v. Parrish, 300  
U.S. 379 (1937)  
Williams v. Rhodes, 393 U.S. 23  
(1968)  
Wilson v. Seiter, 501 U.S. 294  
(1991)  
Witters v. Wash. Dep't of Servs.  
for the Blind, 474 U.S. 481  
(1986)  
Wooley v. Maynard, 430 U.S. 705,  
712 (1977)  
Wright v. Georgia, 373 U.S. 284  
(1963)  
Yates v. United States, 354 U.S.  
298 (1957)  
Zauderer v. Office of Disciplinary  
Counsel, 471 U.S. 626 (1985)

## APPENDIX B -- Research Tips

### 1. Law Library Research Guide on the Supreme Court

The Law Library website contains an excellent guide to sources of information about cases decided by the Supreme Court: <http://law.gwu.libguides.com/scotus>. Everyone should visit this page to see what is available.

### 2. Briefs and Records

Excellent resources for learning more information about cases are the briefs and records of the cases. Many of the briefs and records are available on-line or in microfiches held in the Law Library. The research guide describes available sources here: <http://law.gwu.libguides.com/scotusbriefs>

### 3. Newspaper Articles

Old newspaper articles often provide interesting information about the parties to a case and the context of the litigation.

Newspapers.com has searchable images from 3,700 newspapers from the 1700s-2000s. This is a paid subscription website, but you can sign up for a free 7-day trial. Past experience indicates that it is one of the best places to find out information about the persons and events in older cases. The website is: [www.newspapers.com](http://www.newspapers.com).

Gelman Library has subscriptions to various databases that contain scanned and searchable historical newspapers, some dating from the early 1700s. The databases include Early American Newspapers (really impressive), 19th Century Newspapers, and historical collections of the New York Times, Washington Post, Los Angeles Times, and Chicago Tribune. The Law Library has a research guide that describes these sources here: <http://libguides.gwu.edu/newspapersdatabases>.

Google Newspapers has many scanned newspapers from the 20th century: <https://news.google.com/newspapers>. After your search results appear, click "tools" and you can limit the date range.

You can search for recent newspapers in Westlaw's "United States Newspapers" (USNP) database and Lexis's "News, All (English, Full Text)" database. You must use your Westlaw and Lexis passwords to access these databases.

## APPENDIX B -- Research Tips

You can use the ProQuest database to search recent newspapers that are not available on Westlaw and Lexis, including some important newspapers like the Wall Street Journal. The link for the George Washington University's ProQuest account is here:

<http://proxygw.wrlc.org/login?url=https://search.proquest.com/advanced?accountid=147036>. You will need to supply your GW Net ID credentials (i.e., your university "@gw.edu" email) instead of your GW Law Net ID credentials (i.e., your law school "@law.gwu.edu" email) for ProQuest access. If you have not activated your GW Net ID credentials, you can do so at this website: <https://it.gwu.edu/activate-or-access-gw-email>.

### 5. Ancestry.com

In past years, students have found interesting information about the parties involved in the cases using the Ancestry.com website. You can obtain free access to this subscription website by visiting the National Archives and using one of their computers. For more information, see:

<http://www.archives.gov/research/databases/>

### 6. Selected notes of Justices Felix Frankfurter, William O. Douglas, Frank Murphy, Robert Jackson, Harold Burton, Tom Clark, Earl Warren and William Brennan

The book The Supreme Court in Conference, 1940-1985 (Del Dickson, ed. 2000), contains excerpts from the personal notes of Justices Felix Frankfurter, William O. Douglas, Frank Murphy, Robert Jackson, Harold Burton, Tom Clark, Earl Warren and William Brennan in more than 300 cases. The Law Library has copies of this book: [https://wrlc-gwalaw.primo.exlibrisgroup.com/discovery/fulldisplay?docid=alma991001020539704112&context=L&vid=01WRLC\\_GWALAW:PrimoTaskForceVersion&search\\_scope=JACOB&tab=LibraryCatalog&lang=en](https://wrlc-gwalaw.primo.exlibrisgroup.com/discovery/fulldisplay?docid=alma991001020539704112&context=L&vid=01WRLC_GWALAW:PrimoTaskForceVersion&search_scope=JACOB&tab=LibraryCatalog&lang=en)

### 7. Researching Papers of Supreme Court Justices

Some Supreme Court Justices have donated their papers to libraries upon their retirement or death. These papers sometimes provide insider views into older cases. Brittany Warren '12, who took this seminar in 2011, prepared the following excellent guide to researching the Papers of Supreme Court Justices:

## **APPENDIX B -- Research Tips**

### **Researching Supreme Court Justices' Papers by Brittany Warren**

One of the things that I found most useful in writing my paper last year was researching the papers of the Supreme Court Justices on the Court at the time the decision was handed down. What is available may be a treasure trove - notes from clerks, handwritten memos between the Justices, early drafts of opinions, etc. -- and it can really help flesh out your paper to include this material.

#### **Step 1: Identify the Justices on the Court (this goes without saying)**

A good starting point is identifying the Justices who actually authored opinions—majority, concurrences, and dissents. These will generally be the Justices whose papers contain the most interesting material. (Not always the case, so check them all!)

For my case, Reid v. Covert, I wanted to find material from Justice Hugo Black (majority), Justice Felix Frankfurter and Justice John Marshall Harlan II (concurrences), and Justice Tom C. Clark (dissent).

#### **Step 2: Identify If and Where They Archived Their Papers**

The easiest way to do this is by a Google search (e.g., "John Marshall Harlan II papers"). Most—but not all—of the Justices donated their papers to the Library of Congress. Justice John Marshall Harlan II's papers, for example, are at the Princeton University Mudd Manuscript Library, while Justice Tom C. Clark's papers are kept at the University of Texas's Tarlton Law Library. Justice Frankfurter's papers are at Harvard Law Library, but the Library of Congress has a copy that you can search on microfiche. Rarely you might run into access restrictions—in order to access Justice Black's collection at the Library of Congress, you have to request access from his family. If you have a legitimate research purpose, you will get access, but it can take a week or two for the paperwork to go through. Start early!

## APPENDIX B -- Research Tips

### LIBRARY OF CONGRESS

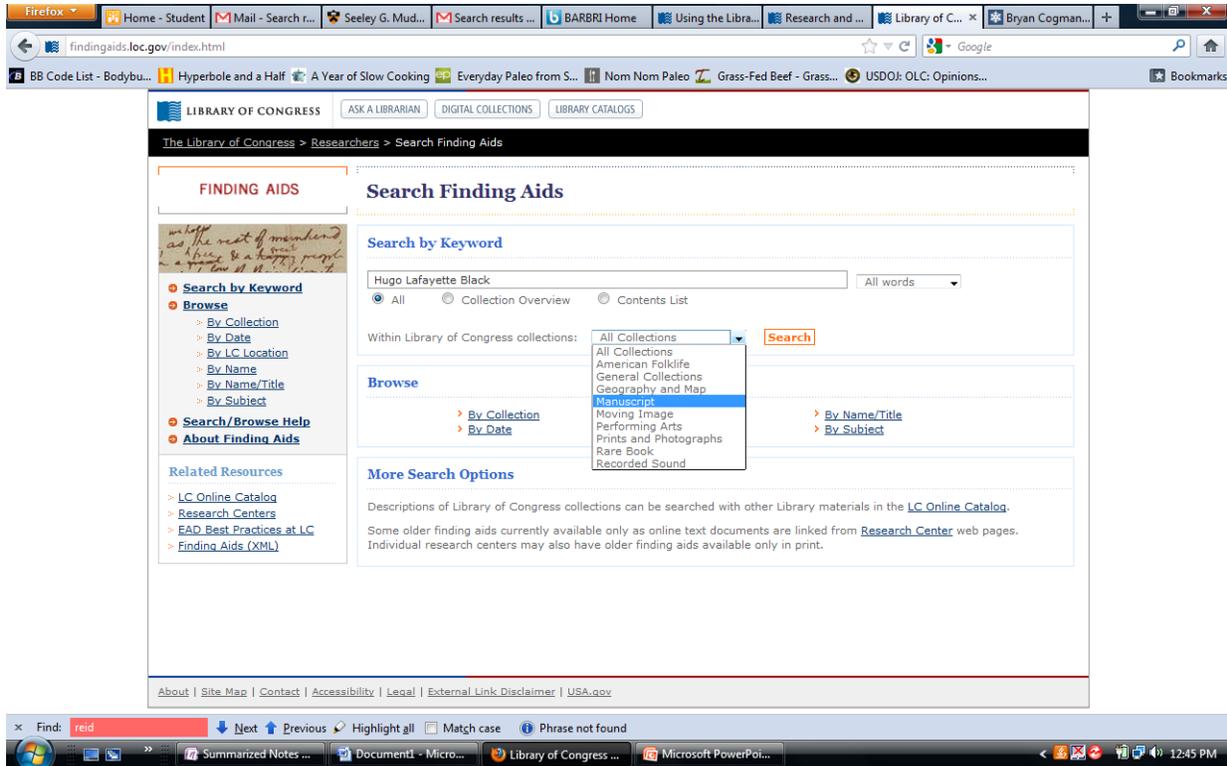
The Library of Congress might seem intimidating if you've never used it, but researching there is very easy! First, you need to apply for a reader card. You have to go in person to the Reader Registration Room in the Madison Building, which is in room LM 140 (first floor, near the Independence Avenue entrance). You can preregister here: <http://www.loc.gov/rr/readerregistration.html>. When you go, getting your card will take approximately 15 minutes if there is no line. Once you have your card, you are ready to research.

Supreme Court papers are housed in the Madison Building's Manuscript Reading Room, so you're in the right place already.

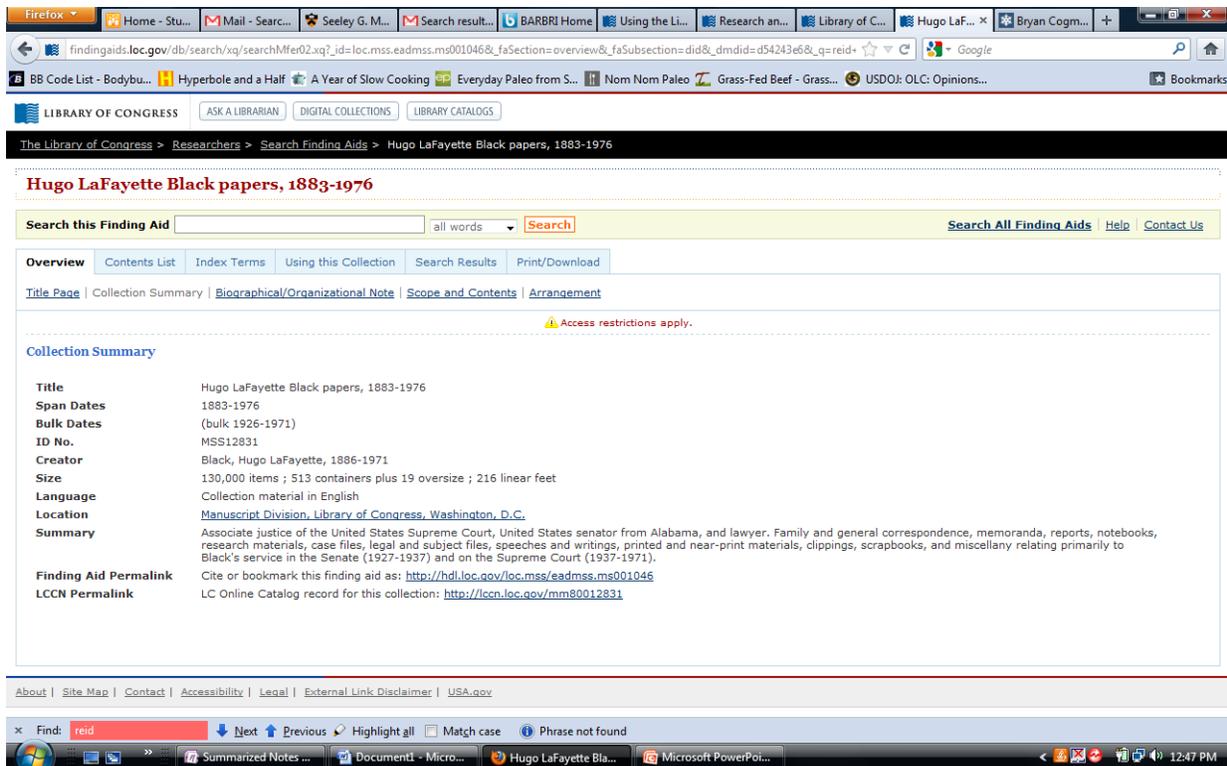
When you enter, you will have to put your backpack, purse, etc., in one of the lockers that will be on your right hand side. There will be a check-in person sitting at a desk directly in front of you as you enter—you will get a key from them after you sign in. I recommend bringing a camera or your cellphone to take pictures, as the Library charges for photocopies. You may bring your computer if you want to take notes, but that's about it. All food and drink are prohibited, even bottled water. You'll have to leave all of that in the locker.

All of the Manuscript Reading Room stacks are closed, so you'll have to request a librarian to retrieve the information for you. Once you're in the reading room, you go to the desk and fill out a request card (and show your Reader Card) for one of the librarians to go get the material for you. It will speed up the process if you've looked up the information in advance in the online "Finding Aid." For example:

# APPENDIX B -- Research Tips



It will take you to the online finding aid:



## APPENDIX B -- Research Tips

You can then search these papers.

The screenshot shows a web browser window displaying the Library of Congress website. The address bar shows the URL: [findingaids.loc.gov/db/search/xq/searchMferDsc04.xq?\\_id=loc.mss.eadmss.ms001046&\\_start=2257&\\_lines=125&\\_q=reid+v+covert&\\_displayTerm=reid+v+](http://findingaids.loc.gov/db/search/xq/searchMferDsc04.xq?_id=loc.mss.eadmss.ms001046&_start=2257&_lines=125&_q=reid+v+covert&_displayTerm=reid+v+). The page title is "Hugo LaFayette Black papers, 1883-1976". The search bar contains the text "reid" and the search button is labeled "Search". The page is divided into sections: "Overview", "Contents List", "Index Terms", "Using this Collection", "Search Results", and "Print/Download". The "Contents List" section is expanded, showing a table with columns "CONTAINER" and "CONTENTS". The contents list includes "Supreme Court File, 1937-1972 (continued)", "Case File, 1937-1971 (continued)", "Reid v. Covert (1 folder)", "Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp. (2 folders)", "Schulz v. Pennsylvania R.R. Co.", "Ullmann v. United States", "United States v. Minker", "United States ex rel. Toth v. Quarles (2 folders)", "October term, 1956", "Conference lists", "Oct.-Jan.", "Feb.-June", "Conference memoranda", "Hell's Canyon, motion for stay", "Opinions by other justices (3 folders)", and "Rules of civil procedure". A "Contents List" sidebar on the right shows a tree view of the collection, including "Family Papers, 1883-1972", "General Correspondence, 1923-1976", "Special Correspondence, 1902-1972", "Senatorial File, 1926-1946", "Supreme Court File, 1937-1972", "Nomination File, 1937-1945", "Case File, 1937-1971", "Judicial Conference", "Administrative File, 1939-1971", "Office File, 1937-1972", "Speeches and Writings File, 1926-1971", "Miscellany, 1896-1973", "Addition, 1951-1952", "Restricted Material, 1968-1971", and "Oversize, 1896-1947".

So going into the Reading Room, I knew I wanted Box 326 and 327. You can search either a hardcopy of the finding aid or use of the library's computers to search, but it's easier to have everything sorted out in advance.

When you give the librarian your request card, you go sit at one of the tables and wait. You can request up to three boxes at a time. They will bring them to you on a rolling cart. BE CAREFUL: You can only take one folder out of the box at any one time, and the folders may or may not be labeled, so you'll probably have to look through several in order to find what you're looking for.

Take pictures, and enjoy! When you're done, put the folders back in the same order and return the cart to the front. Fill out another card and repeat.

### REMOTE ACCESS

You may have to jump through additional hoops if you need

## APPENDIX B -- Research Tips

papers for a Justice whose collection is not housed at the Library of Congress. Your Google search will probably reveal where the papers are kept.

Most of the libraries have websites where you can find information on how to search the collection (generally called a "Finding Aid" or "Guide to the Collection"), and will look something like this:

Princeton University Library Mudd Manuscript Library

Finding Aids Home | New Search | Help

Permanent URL: <http://arks.princeton.edu/ark:/88435/44558d293>  
Download PDF

**John Marshall Harlan Papers, 1884-1972 (bulk 1936-1971): Finding Aid**

**MC071**



Portrait of John Marshall Harlan, 1956  
Seeley G. Mudd Manuscript Library  
65 Olden Street  
Princeton, New Jersey 08540 USA

Find: reid    Next    Previous    Highlight all    Match case

Click on the "Arrangement" Hyperlink.

## APPENDIX B -- Research Tips

The screenshot displays a web browser window with the following content:

- Browser Tabs:** Firefox, Home - Stu..., Mail - Comp..., Inb... (2) - s..., BARBRI Home, For Research..., Reader Regis..., Bryan Cogm..., Guide to the..., John Mar..., Capture a Sc...
- Address Bar:** findingaids.princeton.edu/getEad?eadid=MC071&kw=#arrangement
- Page Title:** Arrangement
- Section:** Organized into the following series:
  - Series 1: Supreme Court Case Files--October Terms, 1954-1971
  - Series 2: Second Circuit, U.S. Court of Appeals, 1949-1971
    - Subseries 2A: Printed Opinions--October Terms, 1953-1970
    - Subseries 2B: Miscellaneous Files, 1949-1971
  - Series 3: Selected Correspondence and Related Materials, 1890-1971
  - Series 4: General Correspondence, 1927-1971
  - Series 5: Speeches, Statements, Interviews, Etc., 1936-1971
  - Series 6: Writings, 1914-1971
    - Subseries 6A: By and About Harlan, 1920-1971
    - Subseries 6B: Writings by Persons other than John Marshall Harlan on Miscellaneous Subjects, 1914-1969
  - Series 7: Appointment Records, 1931-1970
  - Series 8: Documents, 1884-1965
  - Series 9: Memorabilia, 1890-1961
  - Series 10: Photographs, 1920-1971
  - Series 11: Scrapbooks and Clippings, 1919-1972
  - Series 12: Financial Records, 1935-1971
  - Series 13: Audio Tapes, 1936-1970
- Left Sidebar:** Mudd Manuscript Library, Contact, Top of Finding Aid, Summary Information, Description, Arrangement, Information for Users, Subject Headings, Contents List, Navigate by series: [dropdown]
- Access and Use:** Collection is open for research use.
- Restrictions on Use and Copyright Information:** Single photocopies may be made for research purposes. Permission to publish materials from the collection must be requested from the Curator of the Public Policy Papers. Any copyright vested in Justice John Marshall Harlan has passed to Princeton University; researchers are responsible for determining any other copyright questions.
- Physical Characteristics and Technical Requirements:** Box 696 contains audiotapes. Access to this material follows the Mudd Manuscript Library policy for preservation and access to audiovisual materials.
- Acquisition and Appraisal:** Provenance and Acquisition: This collection was donated through a bequest of Justice John M. Harlan in March 1972, with an addition in 1974. Harlan's Legion of Merit medal was donated by Etolia S. Basso in August 1993.
- Search Bar:** Find: reid, Next, Previous, Highlight all, Match case
- Taskbar:** Summarized Notes..., John Marshall Harla..., Document1 - Micro..., 12:14 PM

Then click on the "Supreme Court Case Files" Hyperlink, which will take you to a page where you can search for the identifying numbers for the boxes that house the relevant material:

## APPENDIX B -- Research Tips

The screenshot shows a Firefox browser window displaying a finding aid search results page. The search term 'reid' is entered in the search bar. The results are listed in a table-like format with columns for case number, description, and box number. The following table summarizes the visible results:

Case Number	Description	Box
No. 699 - <i>U.S. v. White Bear</i> , 1956 April	Description: No official opinion is included in the file; William O. Douglas, with whom John Marshall Harlan, concurs, dissenting.	Box 13
No. 701 - <i>Reid v. Covert</i> , 1956 June 11	Description: Tom C. Clark - opinion; Reservation of Felix Frankfurter; Earl Warren, Hugo L. Black and William O. Douglas, dissenting.	Box 13
No. 713 - <i>Kinsella v. Krueger</i> , 1956 June 11	Description: Tom C. Clark - opinion; Reservation of Felix Frankfurter; Earl Warren, Hugo L. Black, and William O. Douglas, dissenting.	Box 13
No. 736, 737 - <i>Burwell &amp; Rogers</i> , 1956 April 2	Description: Per Curiam.	Box 13
No. 803 - <i>Byrd v. Napoleon Ave. Ferry</i> , undated	Description: No opinion is included in the file.	Box 13
No. 832 - <i>Stein v. U.S.</i> , undated	Description: No opinion is included in the file.	Box 13
No. 861 - <i>Sword Line v. U.S.</i> , undated	Description: No opinion is included in the file.	Box 13
Certiorari Memoranda on Cases Summarily Disposed of, undated		
Nos. 0-499, undated		Box 14
Nos. 501-994, undated		Box 15
Miscellaneous Certiorari Memoranda on Cases Summarily Disposed of, undated		

The browser's address bar shows the URL: `findingaids.princeton.edu/getEad?eadid=MC071&kw=#429e259`. The search bar at the bottom of the page shows the search term 'reid' and navigation options like 'Next', 'Previous', 'Highlight all', and 'Match case'. The taskbar at the bottom of the screen shows several open applications, including 'Summarized Notes...', 'John Marshall Harla...', and 'Document1 - Micro...'. The system clock in the bottom right corner shows the time as 12:16 PM.

I knew I needed material from Box 13, and further searching showed that there was material from Box 33 that would also be relevant.

I then filled out a remote photocopying request. Approximately two weeks later, the library sent me via PDF the materials I requested. So again, start early!

I hope this is helpful, and good luck!

## APPENDIX C -- Hall of Fame

Several students from past semesters have published the stories that they wrote in this seminar. The following is a partial list:

- Christopher E. Bailey, The Extraterritorial Application of Constitutional Law: United States v. Verdugo-Urquidez, 36 B.U. Int'l L.J. 119 (2018)
- Jeffrey D. Baldrige, Brown v. United States: The Greater Good be Damned, 57 Idaho L. Rev. \_\_\_\_ (forthcoming 2021)
- Christopher Carrier, Schneider v. New Jersey: Weapons in the Defense of Liberty, 91 Miss. L. Rev. \_\_\_\_ (forthcoming 2021)
- Courtney Dickson, Playing God: The State Sanctioned Starvation of Nancy Cruzan, 89 Geo. Wash. L. Rev. Arguendo \_\_\_\_ (forthcoming 2021)
- Sean M. Sherman, Eckhardt v. Des Moines: The Apex of Student Rights, 88 Geo. Wash. L. Rev. Arguendo 115 (2020)
- Andrew J. Smith, The Supreme Court's About-Face in Greer v. Spock, 2020-3 Army Lawyer 54
- Brittany Warren, The Case of the Murdering Wives: Reid v. Covert and the Complicated Question of Civilians and Courts-Martial, 212 Mil. L. Rev. 133 (2012)

If you publish your essay, discover another essay that has been published, or would like advice on submitting an essay for publication, please contact Judge Maggs.

## **APPENDIX D -- Learning Outcomes**

This Appendix identifies the "learning outcomes" for this course in accordance with ABA Accreditation Standards 301 and 302 and the Guidance to these Standards.

**(a) Knowledge and understanding of substantive and procedural law**

Students will learn the relevant substantive and procedural law in the nine cases listed in the syllabus and the twenty cases that the students will select to present in class.

**(b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context**

Students will improve their skills in undertaking and evaluating "single case" historical research. They will learn to identify, describe, and assess the importance of the factual and legal context in which a case arose, the identifies of the parties and the attorneys involved in a case, the path of litigation of a case, the aftermath of a case, and the reasons that knowing the complete history of a case might have value.

**(c) Exercise of proper professional and ethical responsibilities to clients and the legal system**

Students will increase their understanding of appropriate and inappropriate professional conduct by studying stories of how attorneys and clients have interacted in important Supreme Court cases.

**(d) Other professional skills needed for competent and ethical participation as a member of the legal profession (including, but not limited to, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation)**

Students will improve their ability to undertake historical research, to describe their research in written and oral presentations, and to think critically about historical evidence.

Students will improve their ability to discuss controversial legal and policy issues in a professional and

## **APPENDIX D -- Learning Outcomes**

respectful manner.

Students will improve their understanding of the role of lawyers in advising clients (including government officials) about constitutional issues.

Students should be familiar with those events in U.S. history that are necessary for understanding the cases covered in the course.