Supreme Court Decisionmaking  
May 2006  
Melissa Hart  
Tentative Syllabus

This class in Supreme Court Decisionmaking is designed to give students a chance to talk about the politics and processes of the United States Supreme Court and also to consider several cases currently before the Court as an opportunity to experience first-hand the benefits and the difficulties of collegial decisionmaking on important and sometimes contentious legal issues.

Class participation is essential to the success of this class. In addition to regular and active participation in discussion, each student will have several specific roles to fill over the course of the class. In a very abbreviated form, our class will follow the life cycle of a case at the Supreme Court.

On the second day of the class, you will meet as a “conference” of justices to consider which cases your Court will hear during the Term. I have pre-selected the first case, which will be heard on the fourth day of class. I have also selected seven additional cases from which your conference must select the remaining cases to hear arguments and write opinions on. All of the cases I have selected are currently pending before the Supreme Court.

On four or five of the class days, we will be conducting oral argument sessions on the cases you select. For each of those days, four students will be assigned the roles of attorneys for petitioners and respondents. (Each student will serve as a lawyer at least once.) The attorneys will argue the cases for their clients and the remaining students will serve as an active bench, questioning the lawyers about the cases.

After each argument session, you will meet in Conference. Depending on the size of the class, we will have either one or two conferences. In conference, you will vote on the cases and determine who will be responsible for the majority opinion and who might author dissenting or concurring opinions.

Over the course of the 3-week class period, we will have several meeting/writing days. On those days, I will meet individually with students who are authoring opinions. I will also expect you to circulate drafts to each other and to report to me on whether and how votes on the different issues change over the course of the drafting process.

Students’ grades will be based in part (20 percent) on in-class participation. In addition to active participation, each student will be required to draft an opinion in one of the cases we consider during the class. You may write a majority opinion, a concurrence or a dissent. Sixty percent of your grade will be based on this opinion. The remaining 20 percent of your grade will be based on a second writing requirement – a four-page response to the majority opinion in one of the cases other than the one in which you draft your primary writing project.
Tentative Schedule of Assignments
(All reading materials other than those on Westlaw are available from Professor Hart.)

May 15  The Importance of Personnel
Reading: Handout #1
Supreme Court Politics, 58-68, 70-108, 122-42, 302-324

In class: Discussion of reading, research on Miers and Alito nominations

May 16  Setting an Agenda
Reading: Handout #2
Supreme Court Politics, pages 334-380; Materials on cases

In class: Discussion of reading, “conference” to vote on cases for “Term”

May 17  How Justices Decide Cases
Reading: Handout #3
Lee Epstein and Jack Knight, The Choices Justice Make

In class – Guest Speaker

May 18  First Argument Day
Reading: Burlington Northern v. White
Briefs (2006 WL 704480 and 2006 WL 622126) and lower court opinion
(364 F.3d 789 (6th Cir. 2004))

In class: Oral argument and conference on White

May 19  Second Argument Day
Reading:
Briefs, lower court opinion for second case

In Class: Oral argument and conference on second case

May 22  Meeting/Writing Day

May 23  Third Argument Day
Reading:
Briefs and lower court opinion in third case

May 24  Meeting/Writing Day

May 25  Fourth Argument Day
Reading:
Briefs and Lower court opinion in fourth case
May 26  Collegial Decisionmaking
   Reading: Handout #4
   Materials on Collegial Decisionmaking
   In class: Discussion of reading, meeting of conferences

May 30  Meeting/Writing Day

June 1  Predicting Outcomes; Reforming the Court
   Reading:
   Handout #5 (The Supreme Court Forecasting Project, 104 Colum. L Rev. 1150 (2004); materials on reforming the Court)
   In class: Discussion of reading

June 2  End of class party, wrap-up discussion