

Columbian College of Arts and Sciences

Course Number: PPPA 2000-10
CRN 43147

Semester: Fall 2023

Course Title: Justice and the Legal System 1: Constitutional Law for the 21st Century

Meeting Time/Place: Monday and Wednesday from 12:45 PM to 2:00 PM
MPA 305

Instructor: Professor Jill F. Kasle
Media and Public Affairs Building, Room 607
(202) 994-8213 - kasle@gwu.edu

“People ask me sometimes, ‘When will there be enough women on the court?’ My answer is: ‘When there are nine.’ Ruth Bader Ginsburg, Associate Justice, United States Supreme Court 1993-2020

“What must underlie petitioners' entire federal assault on the Florida election procedures is an unstated lack of confidence in the impartiality and capacity of the state judges who would make the critical decisions if the vote count were to proceed. Otherwise, their position is wholly without merit. The endorsement of that position by the majority of this Court can only lend credence to the most cynical appraisal of the work of judges throughout the land. It is confidence in the men and women who administer the judicial system that is the true backbone of the rule of law. Time will one day heal the wound to that confidence that will be inflicted by today's decision. One thing, however, is certain. *Although we may never know with complete certainty the identity of the winner of this year's Presidential election [citation omitted] the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law.*”
Justice John Paul Stevens, dissenting in *Bush v. Gore*, 531 U.S. 98,129 (2000).
(emphasis added)

“I have learned much from my teachers, more from my colleagues, and the most from my students.” Rabbi Hanninah, Talmud, Taanit 7b. Quarterly newsletter of the Center for the Study of Law and Religion, Emory University, Spring 2021

I. Introduction to the Course

The Constitution is all around us. We meet in a classroom that is integrated by race, gender, national origin, religion, and ability, among other things, thanks to Supreme Court decisions interpreting the Constitution. Some of you may have grown up with same-sex parents or voted in your first Presidential election in November 2020 or traveled to Washington, D.C., on a passport that was granted without regard to your political views; all these rights are either listed in the Constitution or derived from its language. You will have the freedom to speak in this class and I will have the freedom to teach in this class without fear that the government might shut us down for what we say. For that, we can thank the guarantee of free speech in the First Amendment.

The Constitution was ratified in 1789 yet remains highly relevant today. In 2023, the Constitution was the source of authority for vitally important work in all three branches of government:

- 1) Pursuant to its authority under **Article I** of the Constitution, the Select Committee to Investigate the January 6 Attack on the United States Capitol, a committee created by **Congress**, investigated Donald Trump's efforts to interfere with the Constitutionally prescribed method for certifying an election and issued a report outlining in devastating detail Trump's efforts to cancel the results of the November 2020 presidential election.
- 2) Pursuant to its authority under **Article II** of the Constitution, the Justice Department, part of the **Executive** Branch, indicted Donald Trump on serious charges for his refusal to return government documents after he left the White House and for his attempts to overturn the presidential election that was held in November 2020, making Trump the first president in the history of this country to be charged with violating the criminal laws.
- 3) Pursuant to its authority under **Article III** of the Constitution, the **Supreme Court** issued a series of decisions that required Alabama to redraw its voting districts to create a second majority-black district in the state under the Voting Rights Act (*Allen v. Milligan*), rejected the claim that state legislatures have unchallenged authority to write the rules for federal elections (*Moore v. Harper*), abolished affirmative action (*FAIR v. Harvard*), protected the right to refuse to do business with LGBTQ people (*303 Creative v. Elenis*), and struck down President Biden's efforts to have some student loan debt forgiven (*Nebraska v. Biden*).

What will I learn in this course?

This is a law school course in constitutional law that has been adapted for undergraduates. You will learn both substantive content and practical skills:

- You will learn the foundational principles of the American legal system—including the rule of law and the importance of precedent—and you will learn legal language.
- You will learn to read Supreme Court opinions closely and analyze legal arguments.
- You will develop your ability to write in a brief and clear style.
- You will get a preview of law school.

The course will be demanding, challenging, frustrating, and deeply rewarding.

What are the course objectives?

- 1) In this course, we will study the Constitution as a blueprint of government and as a source of fundamental rights. Accordingly, one course objective is to help you develop an appreciation for the Constitution.
- 2) Another course objective is to help you understand how the Supreme Court does its job.
- 3) The ability to write well is essential. In this class, you will write short legal opinions that will give you practice in a significant course objective: learning to write in a brief and clear style.
- 4) The ability to analyze complex material is a necessary skill for this course and, indeed, for all your courses. Accordingly, you will have many opportunities to develop your analytic thinking.
- 5) In the current political climate, the Constitution is often talked about—and often talked about incorrectly. I want you to be able to talk about the Constitution correctly.
- 6) You will come to understand that constitutional law—indeed, all of law—is composed of stories about people.

Are there prerequisites for this course?

This course is different from every other course you have ever taken. Unless you already have a law degree (which seems unlikely), nothing in your past educational career has prepared you for this course. As a result, students often find themselves lost in the first few weeks of the course. Fear not: you will catch on. A good rule of thumb: it takes about six weeks to get the hang of the course.

Who teaches the course? Is she nice?

The professor in the course is Jill F. Kasle. Professor Kasle earned bachelor's and master's degrees from Northwestern University and a law degree from Boston University. In her professional life, she has done almost everything that a lawyer can do except become a judge and get indicted. Her proudest academic achievement is membership in Phi Beta Kappa. **More than anything, Professor Kasle want to help you learn and be successful in this class.** Her approach to the class is a lot like Professor McGonagall's approach to her Transfiguration classes at Hogwarts School of Witchcraft and Wizardry with occasional touches of Professor Snape. (For those who don't understand the references, see the Harry Potter books.)

Meeting with the professor

If history is any guide, there will be times in this course when you will feel utterly lost. At those moments, I encourage you to make an appointment to meet with me so we can untangle the knots.

I do not hold scheduled office hours (having students lined up outside my office waiting to meet with me seems inefficient and a waste of students' time) but I will be happy to make an appointment to meet with you at almost any mutually convenient time. To make an appointment, send me your availability and I will get back to you as soon as possible with a meeting day and time. While in-person meetings are certainly possible, meetings over Zoom are also an option. Here's the link:

<https://gwu-edu.zoom.us/j/93182894234?pwd=V2ZrM1ZXM3VXS3Z0UzlrZVZub1pjQT09>

Sometimes students feel uncomfortable asking me questions – they don't want me to know that they're confused. Fortunately, this class has three ways to deal with this situation: my student helpers Kelsey Marx, Elizabeth (Lizzie) Hahn, and Arielle Butman. All three are juniors. All three took the class, all three struggled in the beginning, and all three emerged triumphant at the end of the class.

When you go to Kelsey or Lizzie or Arielle for help, they will let me know that a student has met with them but Kelsey, Lizzie, and Arielle will never tell me the name of the student who sought their help. So your visits are completely anonymous as far as I'm concerned. Kelsey's email is marx@gwu.edu, Lizzie's email is elizabethhahn@gwu.edu, and Arielle's email is butmana@gwu.edu.

We also have a secret weapon for students who need help with their writing: Zach Benzaoui (zbenzaoui@gwu.edu) is a tutor at the University Writing Center. Zach, a senior, took the class as a freshman. He's a wonderful writer and, perhaps more to the point, he knows me and what I'm looking for in your writing. I encourage you to get in touch with Zach early in the semester if you feel that your writing could use a tune-up.

Tip: if you make an appointment with Kelsey or Lizzie or Arielle or Zach or me, please keep the appointment. If you must cancel, send an email cancelling the appointment – you do not need to give a reason for the cancellation. **Do not ghost us – ghosting will have a negative effect on your standing in the class.**

Communicating with the professor

I try my best to respond to student emails within 24 hours and I would appreciate your doing the same with my emails to you.

Is it true that most students get an A in this class?

Yes.

Really?

Really. Work *with* me (instead of *against* me) and you will do fine.

OK, so how do I get an A in this class?

- 1) Come to class
- 2) Do the homework
- 3) Meet all deadlines
- 4) Answer the questions that I ask in class,
- 5) Write well

A Note on Internet Usage

I **strongly** discourage you from using the internet in this course. Here's why:

If you lift material from the internet and use that material on any written work in this course, you've committed plagiarism. **FYI: plagiarism turns me into a fiend.**

There's a lot of writing about the law online. Some of the writing is good, some of the writing is bad, and some of the writing is just plain wrong. Problem: you won't know the difference. You're new to the study of law so you don't yet have the ability to discern accurate legal writing from inaccurate legal writing.

Additionally, some phrases in the law—such as standard of review, which we talk about a lot in this course—have two meanings. If you go online to find the definition of standard of review, you could easily find the “wrong” definition but, again, you're new to the study of law so you won't know that the definition you've taken from the internet is the wrong one. Result: a low grade on an exam.

A Note on the Use of Artificial Intelligence

In a word: no. Why? AI (particularly ChatGPT) gets legal material wrong.

A Note on Outside Help

Every so often, a student turns in an exam so polished, so flawless, and so perfect that the exam could only have been written by a lawyer. Lawyers write about the law in a way that is informed by three years of law school and the jobs that the lawyer has held; there's no way a lawyer can write like a college student who's just starting to learn the law. So if I get an exam that displays extremely sophisticated legal writing, I'll be suspicious.

Students are always surprised when I figure out that they didn't write their exams themselves. But get this: I've been teaching for a long time, I have a program on my computer that catches plagiarism, and I know that a line like "We think it fair to say that the resolution of the case at bar depends upon the judicial stigmatism of the court deciding it" was not written by an undergraduate. (The quote, which appeared on an exam, actually comes from *Kirincich v. Standard Dredging Co.*, 112 F.2d 163 (3d Cir. 1940).

I understand that students want to do well in this class but you may not get help on an exam from a lawyer, a judge, a law student, a paralegal, or any other legal professional.

II. Grading Percentages and Assessments

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|-------------------------------------|-----|
| 1) Participation credit | 25% |
| 2) Midterms (note the "s") | 25% |
| 3) Final Exam | 50% |

Participation Credit: The readings in this class are court opinions. Before each class, please read the assigned cases and prepare a case abstract for each case (more about case abstracts during our first class). When you come to class, I will employ the time-honored law school technique of cold calling, *i.e.*, I will randomly call on students and ask questions about the assigned reading. The answers to my questions will be in your case abstracts. **You earn participation credit by answering the questions.** There is only one wrong answer to any of my questions: "I don't know." If I ask you a question and your response is "I don't know", you are telling me that you haven't read the case and you're working against me (see above).

III. EXAMS

Really helpful notes on the exams:

- 1) All exams are take-home exams.
- 2) **You must use Word (.doc or .docx) format for the exams.** If you don't have Word on your computers, please download Word now or ask one of my student helpers for advice on how to put Word on your computer.
- 3) Exams are emailed to kasle@gwu.edu.
- 4) Please attach the exam to the email. Do not put the exam in the body of the email.
- 5) Exam format: your name in the upper left-hand corner; single-spaced paragraphs with a double space between the paragraphs; standard margins; Times New Roman 12 font.
- 6) Students may prepare for an exam together but must write separately. Exams that bear a suspicious resemblance to other exams will not be treated favorably.
- 7) You can ask anyone for help **except** a legal professional (lawyer, paralegal, law student, judge, etc.).
- 8) **Do not use the internet.**
- 9) **Late exams will not be read. Deadlines have meaning.**
- 10) Make it easy for me to give you an A. Turn the exam in on time. Make sure your spelling and grammar are perfect. Analyze the problem intelligently. Write well.

MIDTERM AND FINAL EXAM: In this class (and in law school), we use what are called fact pattern exams. A fact pattern, also known as a hypo (short for "hypothetical"), presents an invented legal case that students, acting as Supreme Court Justices, decide.

Your midterm and final exam will be a hypo. **Here is a typical hypo:**

"In July 2021, Good Weather University (GWU), a fine institution of higher learning in Washington, DC, established a mandatory vaccination policy for all students, faculty, and staff to combat the spread of the Delta variant of COVID, as follows:

"All students, faculty, and staff must have at least the first vaccination shot against COVID before arriving on campus for the Fall 2021 semester and must have the second shot within 30 days of arriving on campus. Students who live in Florida, Texas, Louisiana, Alabama, and Missouri (states with excessively high rates of COVID) must have both shots before arriving on campus. Students who fail to follow this policy will not be able to access campus buildings (including their residence halls)."

John Smith is a resident of Miami, Florida. John is a rising junior at Good Weather

University. John, who is 23 years old, took time off after high school and joined the Florida National Guard. For the past few weeks, John has been with his Guard unit on an emergency basis helping to evacuate Americans from Kabul, Afghanistan.

John had planned to get his first COVID vaccination before returning to GWU in August but the situation in Kabul is so dire that he will barely have time to get back to Florida, pack, and make it to campus before classes start on August 30. John's GWorld card won't work if he arrives on campus unvaccinated. So John authorizes his lawyer to file a request for an injunction against GWU's vaccination policy in Federal District Court in Miami. The District Court finds in favor of John but the Court of Appeals reverses and finds in favor of GWU. What result in the Supreme Court?"

Here is an outline of the answer (note how short the answer is):

"The issue in the case is the following: Is Good Weather University's vaccine mandate legal? The holding is **[give the holding]**. The Supreme Court finds in favor us **[state who wins]**.

The standard of review in this case is **[give the standard of review]**. When applying this standard of review, the Court will ask **[state the questions that are part of the chosen standard of review]**. In this case, **[apply the standard of review]**.

The Court relies for its decision in this case on the precedent case of **[give the name of the precedent case]**. In that case, the Court wrote **[give the relevant holding from the precedent case]**. We apply that precedent case here by **[describe how the Court uses the precedent case to decide the current case]**."

IV. Readings (click on the title to access the readings on this syllabus)

Monday, August 28

The syllabus – please read the syllabus before class

Wednesday, August 30

Introduction to the study of constitutional law

["How to Read a Legal Opinion" by Orin Kerr](#)

[Trump v. Thompson](#) – Court of Appeals opinion – first page to top of page 6

Monday, September 4 – Labor Day (no class)

Wednesday, September 6

The Constitution

Marbury v. Madison

Monday, September 11, and Wednesday, September 13

[United States of America v. Donald J. Trump](#)

["How to Read the Indictment" by Joyce Vance](#)

Monday, September 18, and Wednesday, September 20

Allen v. Milligan (Alabama redistricting case)

Monday, September 25, and Wednesday, September 27

Moore v. Harper (a state legislature cannot write the rules for federal elections)

Monday, October 2, and Wednesday, October 4

FAIR v. Harvard (the affirmative action decision)

Monday, October 9, and Wednesday, October 11

303 Creative v. Elenis (right not to serve LGBTQ people)

Monday, October 16, and Wednesday, October 18

Biden v. Nebraska (student loan decision)

Monday, October 23, and Wednesday, October 25

Review and first midterm due

Monday, October 30, and Wednesday, November 1

[DC v. Heller](#) (Second Amendment)

[McDonald v. City of Chicago](#)

[New York State Rifle & Pistol Association v. Bruen](#)

Monday, November 6, and Wednesday, November 8

[Roe v. Wade](#) (abortion)

[Planned Parenthood v. Casey](#)

[Dobbs v. Jackson Women's Health Organization](#)

V. Miscellaneous but Extremely Important Material

Academic Integrity Code

Academic integrity is an essential part of the educational process, and all members of the GW community take these matters very seriously. As the instructor of record for this course, my role is to provide clear expectations and uphold them in all assessments. Violations of academic integrity occur when students fail to cite research sources properly, engage in unauthorized collaboration, falsify data, and otherwise violate the [Code of Academic Integrity](#). If you have any questions about whether or not particular academic practices or resources are permitted, you should ask me for clarification. If you are reported for an academic integrity violation, you should contact Student Rights and Responsibilities (SRR) to learn more about your rights and options in the process. Consequences can range from failure of assignment to expulsion from the University and may include a transcript notation. For more information, please refer to the SRR website at studentconduct.gwu.edu/academic-integrity, email rights@gwu.edu, or call 202-994-6757.

University policy on observance of religious holidays

Students should notify me **via email** during the first week of the semester of their intention to be absent from class on their day(s) of religious observance. If you tell me orally that you plan to be absent from class to observe a religious holiday, chances are good that I won't remember and I'll wonder why you're not in class. Absence from class for the observance of religious holidays is an absence without penalty. For details and policy, see "Religious Holidays" at provost.gwu.edu/policies-procedures-and-guidelines

Use of Electronic Course Materials and Class Recordings

Students are encouraged to use electronic course materials, including recorded class sessions, for private personal use in connection with their academic program of study. Electronic course materials and recorded class sessions should not be shared or used for non-course related purposes unless express permission has been granted by the instructor. Students who impermissibly share any electronic course materials are subject to discipline under the Student Code of Conduct. Please contact the instructor if you have questions regarding what constitutes permissible or impermissible use of electronic course materials and/or recorded class sessions. Please contact Disability Support Services at disabilitysupport.gwu.edu if you have questions or need assistance in accessing electronic course materials.

VI. Academic Support

Writing Center

GW's Writing Center cultivates confident writers in the University community by facilitating collaborative, critical, and inclusive conversations at all stages of the writing process. Working alongside peer mentors, writers develop strategies to write independently in academic and public settings. Appointments can be booked online at gwu.mywconline.

Academic Commons

Academic Commons provides tutoring and other academic support resources to students in many courses. Students can schedule virtual one-on-one appointments or attend virtual drop-in sessions. Students may schedule an appointment, review the tutoring schedule, access other academic support resources, or obtain assistance at academiccommons.gwu.edu

VII. Support for Students Outside the Classroom

Disability Support Services (DSS) 202-994-8250

Any student who may need an accommodation based on the potential impact of a disability should contact Disability Support Services at disabilitysupport.gwu.edu to establish eligibility and to coordinate reasonable accommodations.

Counseling and Psychological Services 202-994-5300

GW's Colonial Health Center offers counseling and psychological services, supporting mental health and personal development by collaborating directly with students to overcome challenges and difficulties that may interfere with academic, emotional, and personal success. healthcenter.gwu.edu/counseling-and-psychological-services.

Safety and Security

- Monitor [GW Alerts](#) and [Campus Advisories](#) to [Stay Informed](#) before and during an emergency event or situation
- In an emergency: call GWPD/EMeRG 202-994-6111 or 911
- For situation-specific actions: refer to GW's [Emergency Response Handbook](#) and [Emergency Operations Plan](#)
- In the event of an armed intruder: Run. Hide. Fight.

Average Minimum Amount of Out-of-Class or Independent Learning Expected per Week

In a 15-week semester, including exam week, students are expected to spend a minimum of 100 minutes of out-of-class work for every 50 minutes of direct instruction for a minimum total of 2.5 hours of instruction/study per week. A 3-credit course should include 2.5 hours of direct instruction and a minimum of 5 hours of independent learning, totaling a minimum of 7.5 hours of instruction/study per week. More information about GW's credit hour policy can be found at provost.gwu.edu/policies-forms (webpage); or provost.gwu.edu/files/downloads/Resources/Assignment-Credit-Hours-7-2016.pdf (form).]