COURSE SYLLABUS
SEPARATION OF POWERS SEMINAR

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This course is for students who wish to enhance their understanding of some of the most profound issues of constitutional law -- those pertaining to the relative powers of, and the limitations upon, the component branches of our constitutional form of government. During roughly the first two thirds of the semester, we will assess in several contexts the relative roles of the Executive and Legislative Branches, as well as the role of the Judicial Branch in resolving disputes between the two political branches. During roughly the last third of the semester, we will focus on the roles of the respective branches in a time of armed conflict, with special emphasis on the War on Terror.

Class preparation and participation are required. Final grades will be assessed as follows: Seventy-five percent of the final grade will be based on a research paper submitted at the conclusion of the course on a topic to be agreed upon between student and instructor. Twenty-five percent of the final grade will be based on class participation. For these purposes, class participation includes both (1) contributing to a constructive discussion during the weekly meeting of the class, and (2) the submission of two brief comments or questions about the assigned reading no later than noon on the day before the class session at which that reading is to be discussed.

The textbook is *Separation of Powers Law, Cases and Materials*, by Peter M Shane & Harold H. Bruff (2d ed. 2005) (referred to in this syllabus as "S&B"). This syllabus may be modified as the semester progresses depending on how expeditiously we cover the assigned material.

Week 1: Introduction: The Component Branches and The Framers' Design

- Federalist Papers Nos. 48, 49, 51 (available at www.foundingfathers.info/federalistpapers)
- Articles I, II and III of the Constitution

Week 2: The Executive: Power, Privileges and Limitations

- S&B pp. 65-83 (*Youngstown*); 623-28 (*Curtiss-Wright*); 675-93 (*Dames & Moore*)

Week 3: The Executive: Power, Privileges and Limitations (continued)

- S&B pp. 132-38 (*AFL-CIO v. Kahn*)
- *Chamber of Commerce v. Reich*, 74 F.3d 1322 (DC Cir. 1996)
- Report of the ABA Task Force on Presidential Signing Statements and the Separation of Powers Doctrine, pp. 6-20 (available at www.abanet.org/media/docs/signstatereport.pdf)

Week 4: The Executive: Power, Privileges and Limitations (continued)

- S&B pp. 321-32 (*Nixon v. US*); 287-307 (*Fitzgerald v. Nixon* and *Clinton v. Jones*)

Week 5: The Executive: Power, Privileges and Limitations (continued)

- S&B pp. 348-66 (Executive Response to Congressional Subpoenas)
- Supplemental materials to be determined

Week 6: Congress: Power, Privileges and Limitations

- S&B pp. 164-76 (*Chadha*); 461-70 (*Bowsher*); 478-92 (*Morrison v. Olson*)

Week 7: Congress: Power, Privileges and Limitations (continued)

- S&B pp. 120-27 (*Mistretta*); 207-21 (*Clinton v. New York*)

Week 8: Congress: Power, Privileges and Limitations (continued)

- *Hutchinson v. Proxmire*, 443 US 111 (1979)
- *US v. Rayburn House Office Building, Room 2113*, 497 F.3d 654 (DC Cir. 2007)

Week 9: Political Questions

- S&B pp. 644-59 (*Goldwater v. Carter*); 256-64 (*Nixon v. US*); 1035-63 (*Bush v. Gore*)

Week 10: War Powers

- S&B pp. 811-20 (*Prize Cases* and AUMF); 872-87 (*Campbell v. Clinton*); 922-29 (*Doe v. Bush*)

Week 11: Civil Liberties During Armed Conflict

- S&B pp. 932-53 (*Ex parte Milligan* and *Korematsu*)

Week 12: Civil Liberties During Armed Conflict (continued)

- *Ex parte Quirin*, 317 US 1 (1942)
- *Johnson v. Eisentrager*, 339 US 763 (1950)

Week 13: War On Terror

- *Rasul v. Bush*, 542 US 466 (2004)
- *Hamdi v. Rumsfeld*, 542 US 507 (2004)

Week 14: War On Terror (continued)

- *Hamdan v. Rumsfeld*, 548 US 557 (2006)
- *Boumediene v. Bush*, 553 US ____, 128 S. Ct. 2229 (2008)