

**GEORGE MASON UNIVERSITY SCHOOL OF LAW**  
**SUPREME COURT CLINIC**  
**Law 185**

Fall Semester 2021

Adjunct Professors Consovoy, McCarthy, Bates

**COURSE INFORMATION**

- Class Meetings:** Class will be held through a variety of formats, including professor lectures, guest speakers, smaller group meetings, and trips to the Supreme Court (tentative based on the Court's Covid-19 protocols). Below is a tentative schedule with reading assignments, but additional classes, assignments, and events will be added throughout the year.
- Contact Info:** Professor Consovoy, [will@consovoymccarthy.com](mailto:will@consovoymccarthy.com)  
Professor McCarthy, [tom@consovoymccarthy.com](mailto:tom@consovoymccarthy.com)  
Professor Bates, [tbates6@gmu.edu](mailto:tbates6@gmu.edu)
- Course Book:** There is no assigned textbook. We will assign chapters and sections of Stern & Gressman: Supreme Court Practice (9th ed.) (available on Bloomberg; to be provided in PDF), the definitive guide on practicing before the Supreme Court. We also will have other reading assignments, such as articles and briefs we use as exemplars of the clinic's product.
- Grades/Attendance:** Student grades will be based primarily on student writing assignments completed on behalf of the clinic. In particular, 50 percent of a student's grade will be based on the student's work preparing and drafting legal briefs on behalf of the clinic. The remaining 50 percent of a student's grade will be based on the student's completion of weekly assignments providing updates on circuit court and Supreme Court activity. A student's overall grade based on their weekly updates and brief-writing may be adjusted one step upward or downward (for example, from an A up to an A+ or down to an A-) based on the student's participation during in-class discussions. Class attendance is critical. In compliance with George Mason's attendance policy, students absent from 20 percent or more of classes may not receive credit for the course
- Class Structure** We will assign readings that we expect you to discuss in class. Most of our readings will cover the logistics, procedure, and strategy of practicing before the Supreme Court. Generally speaking, the first half of class will be dedicated to discussing the clinic's projects, and the second half of class will be devoted to discussing the assigned readings.

**Requirements** Each student is expected to work on at least two briefs over the course of the year, preferably one each semester. We usually assign three students to each brief. When we find a new matter, we will circulate an email to the class requesting volunteers for that matter. If no one volunteers, we will assign the brief according to relative contributions to date.

We also have two weekly tasks for you to complete. The first is an update of cases where the Supreme Court has called for a response to a petition for writ of certiorari. The second is a circuit report where each student monitors a circuit’s new opinions, on a weekly basis, for potential cases upon which the clinic could contribute.

**Learning Outcomes** By the end of the course, students should have acquired an understanding of the nuts and bolts of Supreme Court practice and the ability to draft an effective brief.

### **SYLLABUS/CALENDAR OF EVENTS**

*(Additional Classes, Assignments, and Events Will Be Added Later)*

<b>Date</b>	<b>Event (Topic)</b>	<b>Reading Assignment</b>
Aug. 25 8:10 pm	Course Procedures, Protocols, and Expectations  Weekly Assignment Signup  Introduction to the Supreme Court	Stern and Gressman (S&G): Sections 1.1, 1.2, 1.2(A)-(B), 1.2(F), 1.3, 1.4, 1.6, 1.17(B), 1.19, 1.20(A), 1.20(B), 1.20(C).  Thompson & Wachtell, <i>An Empirical Analysis of Supreme Court Certiorari Petition Procedures</i> , 16 Geo. Mason L. Rev 237, 239-52 (2009) (Intro and Sections I.A – I.C; ignore Intro’s discussion of CVSGs)  Memo on weekly assignments (calls for a response to petitions and circuit reports).
Sept. 8 8:10 pm	How to Write a Supreme Court Brief	Ross Guberman, “Not the Time for an Opus”  Ross Guberman, “Why Johnny,

		<p>Esq. Can't Write: Ten Causes and Ten Solutions"</p> <p>Ross Guberman, "Five Ways to Write Like John Roberts"</p> <p>The clinic's merits briefs in <i>Boyer v. Louisiana</i>, No. 11-9953, and <i>Birchfield v. North Dakota</i>, No. 14-1468</p>
<p>Sept. 29 8:10 pm</p>	<p>Supreme Court's Certiorari Jurisdiction</p>	<p>S&amp;G: Sections 2.I.1, 2.II.2, 2.II.3, 3.I.1, 3.I.1.(B), 3.I.1.(C), 3.I.1.(D), 3.I.1.(D(1)), 3.I.2, 3.I.3, 3.IV.16, 3.V.22</p>
<p>Oct. 13 8:10 pm</p>	<p>The Supreme Court's Criteria for Granting Certiorari</p>	<p>Supreme Court Rule 10</p> <p>S&amp;G: Sections 4.I.1-3, 4.I.4, 4.I.4(B), 4.I.4(C), 4.I.4(E), 4.I.4(F), 4.I.4(G), 4.I.5, 4.I.9, 4.I.11, 4.I.12-13, 4.I.16, 4.I.17, 4.I.25</p>
<p>Oct. 27 8:10 pm</p>	<p>Strategy for getting the Supreme Court to grant a petition for <i>writ of certiorari</i></p>	<p>S&amp;G: Sections 1.16(C), 5.I.2-4, 5.I.7-10</p>
<p>Nov. 3 8:10 pm</p>	<p>The Solicitor General's Role (Guest Speaker)</p>	<p>Thompson &amp; Wachtell, <i>An Empirical Analysis of Supreme Court Certiorari Petition Procedures</i>, 16 Geo. Mason L. Rev 237, 270-82, 287-90, 295-96 (2009) (CVSG practice)</p>
<p>Nov. 17 8:10 pm</p>	<p>Amicus Briefs</p>	<p>S&amp;G: 6.XIX.40, 13.14</p> <p>Paul M. Collins Jr., <i>Friends of the Court: Examining the Influence of Amicus Curiae Participation in U.S. Supreme Court Litigation</i>, 38 Law &amp; Soc'y Rev. 807 (2004)</p>