

Seminar on Congress, the President and the Courts

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Course Materials

Shane and Bruff, *Separation of Powers Law: Cases and Materials* (2d ed. 2005); excerpts from Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals* (2008); and supplemental materials on e-reserve (internet links also generally provided).

Course Requirements

Attendance, preparation for class, and class participation. There will be assigned reading for eight weeks of class. We will not meet for two weeks for individual meetings and work on research papers. Three class meetings will be devoted to presentations (2-3 per class) with draft papers circulated for review before the presentation. Attendance is required every week (absent compelling reasons for absence).

“Thought” papers, 1-3 pages, on the weekly reading on any topic of your choice, to be emailed to me by 7:30 the morning of class. This paper should not take very much of your time; it simply should discuss a thought, question, and/or response provoked by the reading. You will not be required to write thought papers during the weeks of presentations.

A research paper, with a bibliography. Recommended length 25-30 pages.

Monday, September 25, 4:00 pm: tentative description of your topic due

Monday, November 3, 4:00 pm: rough draft of your paper due, followed by mandatory meeting to review the draft with me. (I will review only this one draft.)

Friday, December 5, 4:00 pm (the final day of classes): Final research paper due

An oral presentation of your paper during a class in November (approximately 30 minutes).

The grade on your final paper will constitute approximately two-thirds of your final grade. The remaining third will be based on the class presentation of your paper, class participation and the “thought” papers. Absences from more than one class during the semester (including presentation days) may result in a lower grade.

Mandatory Format Guidelines for Research Paper

Use headings. Number the pages (after page one). Use one-inch margins on all 4 sides. Use 12-point font consistently throughout your paper. Double space between lines and headings. Multiple line headings may be single-spaced.

Assigned Reading

August 28

Introduction to Separation of Powers

Articles I, II, III & VI of the Constitution

S&B 37-53, 65-83, 675-679 (end II), 686 (last paragraph)-687, 985-988

Johnsen Senate testimony on “Secret Law” (especially the appendix, “Principles to Guide the Office of Legal Counsel”), <http://fas.org/sgp/congress/2008/043008johnsen.pdf>

September 4

Independent Counsel, Appointment & Removal of Officers, and Impeachment

Shane and Bruff, 461-464; 366-369; 478-494; 496 (note 7)-499; 242-253

pages 513-526, The Constitutional Separation of Powers Between The President and Congress, 63 Law & Contemp. Problems 513 (2000), [http://www.law.duke.edu/shell/cite.pl?63+Law+&+Contemp.+Probs.+513+\(WinterSpring+2000](http://www.law.duke.edu/shell/cite.pl?63+Law+&+Contemp.+Probs.+513+(WinterSpring+2000)

summary of Watergate in Washington Post series, <http://www.washingtonpost.com/wp-srv/politics/special/watergate/index.html>

AG Janet Reno 1999 testimony against reauthorization of the IC statute, <http://www.usdoj.gov/archive/ag/testimony/1999/aggovern031799.htm>

September 11

Executive Privilege (and U.S. Attorneys controversy)

S&B 320-332, 340-366, 404-405 n.3

Committee on the Judiciary v. Harriet Miers, U.S. District Court for the District of Columbia, pages 1-17, 21-39, 65-67, 71-93, https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2008cv0409-49

Letter from Attorney General Michael Mukasey to Speaker Nancy Pelosi, Feb. 29, 2008

Letter from Counsel to the President Fred Fielding to Chairmen Leahy and Conyers, June 28, 2007

Letter from Acting Attorney General Paul Clement to President Bush, June 27, 2008

September 18

War Powers I: The Power to Initiate War

S&B 807-809, 811-827, bottom 835-841, 901-914, 918-922, 930-931

Walter Dellinger, OLC opinion, Proposed Deployment of United States Armed Forces in Bosnia and Herzegovina (1995), <http://www.usdoj.gov/olc/bosnia2.htm>

John Yoo, OLC opinion, The President's Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them (2001), <http://www.usdoj.gov/olc/warpowers925.htm>

September 25

War Powers II: Congress's Power to Regulate War and Judicial Review

S&B 809-811, 841-851, 855-859, 872-888, 899-901

Sen. Kennedy bill to prevent the surge in troops in Iraq announced by Pres. Bush:
http://gulcfac.typepad.com/georgetown_university_law/files/emk.iraq.funding.bill.pdf

Sen. Feingold bill to limit funding Iraq War:
http://feingold.senate.gov/redeployment_bill_110th.pdf

Scholars' letter on Congress's authority to oppose the surge:
<http://www.hlpronline.com/misc/Scholars%20Letter%20Congressional%20War%20Powers.pdf>

Rivkin & Casey, What Congress Can (and Can't) Do on Iraq, Washington Post, Jan. 16, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/01/15/AR2007011500970_pf.html

October 2

The War on Terror I

To be announced

October 9

No class meeting—research papers

October 16

The War on Terror II

To be announced

October 30

No class meeting—research papers

November 6
Class Presentations

November 13
Class Presentations

November 27
Class Presentations

December 4
The War on Terror III
To be announced