This course will critically explore the court’s role in our constitutional democracy. Issues will touch upon federalism, separation of powers, recusal, interpretation, judicial philosophies, authority, judicial selection, abstention, remedial power, and judicial ethics. This advanced writing course is a two-credit seminar.

**Course Materials:** Readings will be excerpts from *Federal Courts—Context, Cases, and Problems* by Allen, Finch & Roberts and complimentary electronic supplements on TWEN. Readings will include chapters, law review articles, cases, statutes, blogs, and news articles. All of the reading is intended to stimulate discussion and interest, so you will read at a level to be conversant rather than to be tested on details. If the syllabus indicates “optional,” reading the additional material is truly at your discretion. Readings may change, with notice, if class interest and current events alter our path.

**Course Overview:** Seminars are small to facilitate fuller discussions, depth of analysis, and substantive feedback on oral and written product. This course strives to stimulate meaningful student discussion of a range of topics connected to the judicial branch and provides a meaningful opportunity for the student to become an expert in an area of the student’s choosing. I will help all students in developing paper ideas. All students will submit a final research paper analyzing a relevant topic of the student’s interest.¹

The Judicial Power & Restraint course explores the judiciary’s sources of power, the separation-of-powers tension between the federal judiciary and the other branches (Congress/Executive), federalism (federal/state), areas where the court restrains its power, judicial philosophies (such as strict constructionism), judicial ethics, judicial independence, judicial defiance, judicial selection controversies (such as partisan election of state judges vs. federal appointment system), judicial clerk role, and judicial recusal. These are sample areas, and current events may alter our path.

¹ The course paper should be approximately 25 double-spaced pages in length and written for this course. It should model law review format with respect to general structure and footnoting proper sources. Further written and oral guidance will follow. For immediate guidance, consult Eugene Volokh, *Writing a Student Article*, 48 J. Legal Ed. 247 (June 1998).
Student Learning Objectives

- Question and critique proper judicial role, philosophy, and selection methods
- Identify constitutional versus prudential sources and limits of federal court power
- Articulate and distinguish separation of powers, federalism, and parity
- Appreciate the import of the power and myths of judicial review
- Reconcile and prioritize complex bodies of federal court doctrines
- Sharpen the ability to analogize, distinguish, and synthesize cases
- Examine and apply doctrines of restraint such as abstention
- Explicate the meaning and implications of constitutional and statutory law
- Interpret quintessential, complex precedent to resolve modern hypotheticals
- Navigate conflicting precedent and propose normative paths
- Distinguish competing jurisprudential schools as represented by famous jurists
- Compare and contrast competing scholarly voices
- Demonstrate more nuanced oral communication and advocacy skills
- Deepen critical thinking and bolster unique legal voice on controversial topics
- Develop working thesis, conduct thorough research, and craft thoughtful drafts
- Engage in dialogue to improve your draft and incorporate constructive feedback
- Complete a major, written, finished product evidencing original systematic scholarship based on your individual research

The Fine Print

Grading: The course will include a thoughtful, reflective paper on a student-created topic related to the judiciary. The paper should rely on course materials and outside research as needed to analyze your topic. Meaningful class participation constitutes 30% of your course grade, and the paper comprises the remaining 70% of your grade.

Grading Scale: This course will conform to the Levin College of Law mean and mandatory distributions, https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies#9.

Attendance: Attendance—on time and complete—at every class is expected. It’s your responsibility to sign the roster at the start of class. Excessive absence (>2 absences, including lack of punctuality, preparation, or respect for others) will result in withdrawal from the course and a grade of withdrawn failing.

Academic Honesty: The UF Honor Code, http://www.dso.ufl.edu/students.php, governs our class activities & embodies the foundational community values of honesty and integrity.

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2 Because this course meets a limited number of times and relies on discussion, absences and lack of preparation will detrimentally affect your participation grade. If you have mandatory conflicts with certain days or with the final paper deadline, please speak with me in advance to make appropriate arrangements.
**Workload:** Expect to spend approximately 2 hours preparing for every hour of class.

**Technology:** Use it well: any educational purpose directly related to the course. Please be attentive and refrain from texting, emailing, surfing, gaming, and other nongermane uses of technology. Please silence cell phones. Disruptive use will forfeit technology privileges.

**Notes in Class:** Laptops instill an automatic inclination to transcribe every word the professor utters. My advice is to spend more time listening, thinking, and taking fewer in-class notes. Draft your impressions of articles before class and reconcile new insights from our in-class discussion immediately after class.

**Readings:** Some readings are deep and heavily footnoted. Remember you are not reading for a final exam, but instead reading to gain a broad overview to see if a particular topic interests you. If it does, then you would use the footnotes to aid your research.

**Recording:** Recording a class requires advanced permission and, if granted, will be conditioned upon educational use and shared access with the class.

**Accommodations:** If you seek accommodation, first register with the Disability Resource Center, https://drc.dso.ufl.edu/, which will issue an Accommodation Letter to qualifying applicants for presentation to the Associate Dean for Student Affairs.

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**Reading Roadmap …**

**Class One: August 13  **  **SEPARATION OF POWERS, FEDERALISM & PARITY**


**Class Two: August 20  **  **PROPER JUDICIAL ROLE & JUDICIAL SELECTION METHODS**


**Judicial Selection Methods**


Class Three: August 27 JUDICIAL REVIEW


SEPTEMBER 3 LABOR DAY

Class Four: September 10 JUSTICIABILITY – ADVISORY OPS, STANDING, RIPENESS, MOOTNESS & POLITICAL QUESTIONS

FEDERAL COURTS, Chapter Two, Justiciability and the Judicial Function, pages 29–125.

Class Five: September 17 CONGRESSIONAL CONTROL OVER THE JUDICIARY


**Class Six: September 24**

**FEDERALISM: SUPREME COURT REVIEW OF STATE COURTS**

FEDERAL COURTS, Chapter Twelve, The Original Jurisdiction of the Supreme Court and Appellate Jurisdiction in the Federal Courts, pages 851–912.

✈ Also read: Eugene Volokh, Writing a Student Article, 48 J. Legal Ed. 247 (June 1998)

**Class Seven: October 1**

**ROLE OF PRECEDENT, STATUTORY INTERPRETATION & JUDICIAL PHILOSOPHY—MAKING POLICY?**


**Class Eight: October 8**

**JUDICIAL ACTIVISM & JUDICIAL RESTRAINT**


**Class Nine: October 15**

**NATIONAL SECURITY, DOMESTIC POLICY, AND THE COURTS**

**PROPOSED TOPIC & OUTLINE DUE**


**Class Ten: October 22**  
**Judicial, Chamber & Lawyer Ethics RE: First Amendment**  
**Thesis & Bibliography Due**


**Class Eleven: October 29**  
**Recusal, Contempt & Removal**  
**Best Efforts Draft Due**


**Class Twelve: November 5**  
**Informal Paper Workshop**  
**Presenting Work-in-Progress & Brainstorming**

**Class Thirteen & Fourteen: November 12 & 19**  
**Editing Drafts**  
[Individual Draft Meetings as Necessary to Finalize Papers]

**Final Paper Due** November 26 (Monday) by 4:30 p.m. via email**

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