

APPELLATE ADVOCACY
FALL 2022
SYLLABUS AND RULES
Professor Anna F. Connolly

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Class Schedule: Tues/Thurs Section 4: 9:55-11:10 a.m.; Section 5: 2:10-3:25 p.m.

Class Page: Canvas

Class Location: Debevoise Hall, Nina Thomas Room

Office Hours: Thursdays 12:30-1:30 pm and 3:30-4:30 pm and by appointment (I am happy to meet virtually or in person)

Office Location: Old Schoolhouse, second floor

Teaching Assistants: Amanda Di Dio (section 4); Zachary Handelman (section 5)

INTRODUCTION AND OVERVIEW

Persuasive speaking and writing are the essence of effective appellate advocacy. This course aims to hone your analytical, research, writing, and oral advocacy skills by requiring you to write a brief in a case pending before the United States Supreme Court and to present an oral argument in that case. Classes are intended to help you think critically about the issues in your case and articulate them effectively. Although you will attend classes throughout the semester, the bulk of your work will be done individually, researching and writing assignments pertaining to your case.

During the first third of the semester, you will draft individual sections of an appellate brief. Later you will write a first draft of a complete brief. I will critique your first draft in writing and will confer with you about your work. Read my comments carefully before our conference. Come to our conference prepared to ask questions and to discuss revisions for the final draft. You will then revise your brief and submit the final draft for grading. The goal of this process is to get you to develop the habit of continually improving your writing.

In November or early December you will formally argue the case before a panel of Vermont and New Hampshire attorneys and judges. To prepare, we will discuss oral argument techniques and strategies as a class and then work one-on-one in practice sessions.

LEARNING OUTCOMES

By the end of this course, you will be able to:

1. Evaluate a trial court's decision to judge whether the circumstances of the case warrant an appeal;
2. Organize the record on appeal to tell a compelling story about your client's case to an appellate court;
3. Create an argument that includes legal sources and policy-based evidence to give an appellate court a sound rationale for deciding in your client's favor;
4. Construct a well-written, analytically-sound appellate brief whose Table of Contents and point headings, by themselves, present a persuasive narrative for your client's case; and
5. Deliver an oral argument that conveys to the Court your client's view of the case, while also responding to the judges' concerns about the implications of your client's position.

MATERIALS

The following materials are required:

- 1) Carole C. Berry and Raymond Michael Ripple, *Effective Appellate Advocacy: Brief Writing and Oral Argument* (5th ed. 2016).
- 2) Megan McAlpin, *Beyond the First Draft: Editing Strategies for Powerful Writing* (2014).
- 3) Harvard Law Review Association, *The Bluebook: A Uniform System of Citation* (21st ed. 2020).
- 4) Course Materials (available on course Canvas site).

For each class you will have assigned readings. These readings are designed to facilitate class discussion, give general information about appellate advocacy, and assist you in working on your brief, oral argument, and other assignments. The library also has legal writing texts and law review articles (as does Westlaw and Lexis) on brief writing and oral advocacy.

THE WRITING SPECIALIST

Vermont Law School's Writing Specialist, Professor Jared Carter, is available to help you with the mechanics of your writing, including grammar, punctuation, sentence structure, paragraph structure, and organization. You can meet with Professor Carter at any time, including before you submit a draft of your work for my review. Contact Professor Carter at jcarter@vermontlaw.edu for an appointment.

APPELLATE ADVOCACY RULES OF PROCEDURE

PART I GENERAL RULES

RULE 1: SCOPE OF RULES

These rules govern the form and procedure for the writing assignments and oral arguments in the Appellate Advocacy course. The rules of the Supreme Court of the United States apply when the course rules are silent. The Supreme Court rules can be found here: https://www.supremecourt.gov/filingandrules/rules_guidance.aspx

RULE 2: ASSIGNMENTS

Students must turn in a Preliminary Outline, a Point Heading Outline, a portion of their Statement of the Case, a first draft of the full brief, and a final draft of the brief. Students must also attend a conference with me to discuss their first draft of the full brief and participate in practice and final oral arguments. If students fail to submit a first draft as described below on time, there will not be an opportunity to conference.

RULE 3: FORM OF WRITTEN ASSIGNMENTS

Unless specified otherwise, written assignments must be typed, double spaced (except the Preliminary Outline and the Point Heading Outline, which may be single spaced), and submitted in Microsoft Word format (Microsoft Word is available to download for free through the VLS IT website). The typeface should be Times New Roman, 12 point. Margins must be one-inch on all sides. Page numbers must be centered at the bottom. Work product not conforming to these rules of procedure may be rejected and returned to the student, and may result in a lower grade.

RULE 4: EVALUATION OF ASSIGNMENTS

Each assignment will be evaluated by looking at the quality of the legal research, analysis, organization, written or oral style, and other appropriate criteria. A grading rubric is available on Canvas.

Grades will be computed as follows:

Brief (first and final drafts combined):	60% of final grade
Oral Argument:	20% of final grade
Class Participation:	20% of final grade

Class participation includes class attendance, preparation, and contributions; assignments other than the full brief drafts; preparation for and participation in conference; and preparation for and participation in the practice oral argument. You cannot participate in class if you do not attend regularly, so class attendance is mandatory. Points will be deducted from the final grade of any

student who has two unexcused absences. Under the academic regulations, students who are absent from twenty (20%) percent of the regularly scheduled classes shall be automatically withdrawn from the course with a grade of F-Wd. Students are responsible for monitoring their own compliance with the attendance policy. Individual faculty (that's me) are not permitted to authorize absences in excess of the school's twenty percent limit. Points may also be deducted from a student's final grade for repeated failures to arrive for class on time or for leaving class early.

RULE 5: TIMELY SUBMISSION OF ASSIGNMENTS

Students are responsible for submitting assignments at the proper time and place. Any student who fails to submit an assignment at the proper time and place, and who has not received prior permission to do so, is subject to a late penalty of up to five points per day late. Unless otherwise specified, all assignments are due on Canvas. Please note, computer malfunction is not an acceptable excuse for a late assignment.

RULE 6: APPLICATION OF THE VLS HONOR CODE

The Vermont Law School Honor Code governs your work and conduct in Appellate Advocacy. Whenever you use the words or ideas of another writer you must acknowledge the original source. Cite the original source even if you put another person's ideas in your own words. The assignments you submit must be your own work product. You may not give an outline, draft, list of cases, or a completed assignment to another student. The student who loans the information and the student who uses it are equally at fault. Do not obtain or review the cert petitions or the briefs filed in the Supreme Court or the briefs filed in any lower court in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*.

PART II WRITTEN ASSIGNMENTS

RULE 7: PRELIMINARY OUTLINE

Your first written assignment will be an outline summarizing the major issues in the case. The outline should include (1) The Question(s) Presented, stated in a persuasive manner; (2) The Standard of Review; (3) Your (developing) theory of the case in bullet form; (4) The three strongest arguments in your favor; (5) The three strongest arguments in favor of your opponent; and (6) Authority you have found already and sources you intend to consult. The page limit is 2-4 pages. The Preliminary Outline is due on September 20 by 8 a.m. on Canvas.

RULE 8: STATEMENT OF THE CASE

The Statement of the Case (SOC) must succinctly and persuasively state the relevant facts and the procedural history of the case. Any fact used in the argument section must be included in the SOC. You must cite to the page(s) in the lower court decision where evidence may be found to substantiate each fact relied on. You must submit a draft portion of your SOC on October 4 by 8 a.m. with your Point Heading outline. I will leave it up to you to decide how

much of the SOC to submit – one paragraph, the whole thing, or something in between. For this assignment, the length of your SOC will not affect your grade.

RULE 9: POINT HEADING OUTLINE

The point headings are an outline of your argument and should demonstrate clear and persuasive organization of the issues in your brief. Each heading must be one complete sentence. No heading may appear at the bottom of a page without at least two lines of text below it. Never use sub-headings or minor point headings under a heading unless you use two or more of them. If you can formulate only one heading under a larger heading, then consolidate that lesser heading into the larger heading. You will have an opportunity to refine point headings as you refine your analysis. Point headings must conform to the following conventions, plus they should be in bold print:

- I. **MAJOR POINT HEADINGS ARE IDENTIFIED WITH A ROMAN NUMERAL AND MUST BE IN ALL CAPS AND NOT UNDERLINED.**
 - A. **Sub-headings are identified with a capital letter and must be underlined.**
 1. **Minor sub-headings are identified with an Arabic numeral and should not be capitalized (except the first letter of the first word) or underlined.**

A draft of the point heading outline is due on October 4 by 8 a.m. on Canvas.

RULE 10: FIRST DRAFT OF BRIEF

Your first draft may include all the sections that are required for the Final Draft (see Rule 11). Because those sections are required for your final brief, it is your best interest to turn them in with your first draft. However, the first draft **must** include only the sections listed below.

1. Questions Presented. The question(s) presented should state each issue clearly and succinctly without attempting to set out a full argument. Questions presented normally do not include cases, names, dates, amounts, or similar items. The questions presented must appear on a separate page numbered “i” immediately following the title page. They must be single-spaced, and only the first letter of each sentence should be capitalized.
2. Statement of the Case. See Rule 8.
3. Summary of Argument (SOA). The SOA is a synthesis of all arguments made in the body of the brief. The SOA should strongly communicate your theory of the case. The SOA should be no longer than two to three pages. The SOA should conclude with a request for relief. The SOA generally should not contain citations to the record or to authority.
4. Argument. The argument is the heart of the brief. It must include your contentions and the reasons for them. You must organize your points

persuasively and include citations to authority. Citations must conform to the Bluebook. The argument should typically be between ten to fifteen pages.

5. Conclusion. The conclusion must specify the precise relief requested. It must be short (i.e. no more than three or four sentences). The conclusion may also contain a one or two sentence summary of the argument, but the conclusion should not contain new arguments, new facts, or citations to authority.

One copy of the first draft of your brief, including the Question(s) Presented, SOC, SOA, Argument, and Conclusion, is due Wednesday October 19 by 8 a.m. on Canvas. I will critique it and will return the critiqued draft to you before our conference.

RULE 11: FINAL DRAFT OF BRIEF

The page limit for the final draft is twenty-five pages. That is a limit, not a goal. Do not feel pressured to write twenty-five pages. The Table of Contents and Table of Authorities do not count toward the page limit. The final draft is due two weeks after your individual conference. Please submit to me on Canvas the final draft by 8 a.m. **on the due date. Exchange a copy of the final draft with opposing counsel as soon as both of you have submitted briefs to me. Also submit one electronic copy of your final brief to Brenda Caron** when you submit the hard copy to me. The final draft of the brief should contain the following sections:

1. Title page: See attached Appendix.
2. Question(s) Presented. See Rule 10.
3. Table of Contents. The table of contents begins a new page numbered “ii.” It must set forth each section of the brief, including all point headings in the order and form in which they appear in the brief, with the number of the page of the brief on which each section begins.
4. Table of Authorities. The table of authorities begins a new page with the appropriate lower case Roman numeral. It must list each authority cited in the brief and the pages on which each authority is cited. The citations must be in Bluebook form, but without internal page citations. If an authority is cited on five pages or more of the brief, use “passim” instead of listing all pages. Divide the table of authorities into the following three sections:
 - (1) Cases. List the cases cited in the brief in alphabetical order.
 - (2) Statutes and Constitutional Provisions. List all constitutional provisions, statutes, code sections, and model code and act provisions cited in the brief.
 - (3) Other Authorities. List all other authorities cited, such as law review articles and treatises.

5. Inside Caption. The inside caption is the title page without your name/number. It should begin a new page numbered “1.”
6. Opinions Below. This section should give the citation (including the court) of the pertinent opinions and judgments delivered in the courts below. It must be double-spaced, and it should begin on the same page as the inside caption.
7. Jurisdiction. The jurisdictional statement must contain a precise citation to the statutory provision, general rule, or other authority that confers jurisdiction on the Court to review the appeal. The statement must also contain the dates of the opinions below and the dates that the petition for certiorari was filed and cert was granted. It must be double-spaced.
8. Constitutional and Statutory Provisions Involved. This section should quote any constitutional provisions, statutes, code sections, or rules that are at issue. Give the complete citation. If the provisions involved are lengthy, provide only the cite and indicate that the provision’s full text will be provided in an Appendix to the brief.
9. Statement of the Case: See Rule 8.
10. Summary of the Argument: See Rule 10.
11. Argument: See Rule 10.
12. Conclusion: See Rule 10.
13. Signature Block. The signature block must appear as follows and must include the student’s signature.

Respectfully submitted,

Student’s Name
Student’s Telephone Number

Attorney for (Party Designation)

14. Appendices. The appendices may contain the quoted provisions from the section of the brief called Constitutional and Statutory Provisions Involved. An appendix is only necessary if the pertinent provisions involved are lengthy. Each appendix should be lettered, e.g., Appendix A, and should begin a new page.

PART III ORAL ARGUMENT

RULE 12: PRACTICE ARGUMENTS

A. Mandatory practice arguments will occur before the final argument. You will be asked questions during the practice argument, and you will receive feedback afterward. You will be allotted ten minutes for your practice argument and one minute of rebuttal. Note that this is less time than you will have for the final arguments. See Rule 13.

RULE 13: FINAL ARGUMENTS

A. I will assign sides and pair students for oral argument.

B. Final arguments will take place on several days or evenings in late November and early December. You will argue before a panel of judges, comprised of two to four lawyers and judges from Vermont and New Hampshire; only I will grade the argument. Each student will be allotted **twenty minutes** for final argument. Counsel for Petitioner can reserve up to **three minutes** for rebuttal. A party is not required to use all or any of the rebuttal time reserved. Judges can use their discretion enforcing time limits.

C. Petitioner will open the argument. Respondent will argue after Petitioner. Students are prohibited from arguing a legal point that neither your brief nor your opponent's brief mentioned, unless it is raised by the Court. Students may rely only on authority cited in either their brief or the brief of their opponent. Petitioner may not raise issues during rebuttal that were not raised by the Respondent during the argument itself, even if they were raised in Respondent's brief.

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 FALL 2022
 Class Schedule
 Professor Anna F. Connolly
 aconnolly@vermontlaw.edu

<u>Week</u>	<u>Class</u>	<u>Date</u>	<u>Assignment</u>	<u>Written Assignment</u>	<u>Class Agenda</u>
1	1	August 30	-Read syllabus and class assignment schedule -Read pages 1-10 of the Berry textbook		Introduction and class overview Discuss the appellate process and the importance of appellate advocacy
	2	Sept 1	-Read District Court decision in <i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard College</i> (Canvas) -Read: https://www.newyorker.com/news/daily-comment/the-supreme-court-appears-ready-finally-to-defeat-affirmative-action		Discuss <i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard College</i>

2	3	Sept 6	<p>-Read First Circuit decision in <i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard College</i> (Canvas)</p> <p>-Read: https://www.washingtonpost.com/politics/2022/02/22/supreme-court-harvard-affirmative-action/</p> <p>-Read: https://www.propublica.org/article/a-colorblind-constitution-what-abigail-fishers-affirmative-action-case-is-r</p>		<p>Continue to discuss <i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard College</i></p> <p>Learn who you will represent</p>
2	4	Sept 8	<p>-Read pages 3-27 of the McAlpin textbook</p> <p>-Read pages 78-80 of the Berry textbook</p>		<p><u>Writing</u></p> <p>Discuss coherent writing</p> <p><u>Appellate Process</u></p> <p>Discuss Preliminary Outline</p>
3	5	Sept 13	<p>-Read pages 33-58 of the McAlpin textbook</p> <p>-Read pages 93-97 of the Berry textbook</p> <p>-Read <i>Keep it Short and Simple, Justices Advise Appellate Attorneys</i> (Canvas)</p>		<p><u>Writing</u></p> <p>Discuss vigorous writing</p> <p><u>Appellate Process</u></p> <p>Discuss Questions Presented, Standard of Review</p>

	6	Sept 15	-Read pages 63-100 of the McAlpin textbook -Read pages 97-105 of the Berry textbook		<u>Writing</u> Discuss clear writing <u>Appellate Process</u> Discuss Statement of the Case
4	7	Sept 20	-Read pages 105-139 of the McAlpin textbook -Read pages 107-113 of the Berry textbook	Preliminary Outline due on Canvas by 8 a.m.	<u>Writing</u> Discuss polished writing <u>Appellate Process</u> Discuss Point Headings
	8	Sept 22	-Read pages 59-63 and 105-107 of the Berry textbook -Optional – skim: <i>Fry v. Napoleon Comty. Schools</i> <i>State v. Robinson</i> (majority op.) <i>US v. Whitten</i> (majority op.) (Canvas)		Class will be taught by VLGS President Rod Smolla <u>Writing</u> Discuss tips for persuasive writing <u>Appellate Process</u> Discuss Summary of the Argument
5	9	Sept 27	Read pages 70-78 and 114-121 of the Berry textbook Read Anna F. Connolly, <i>An IDEA for Legal Writing</i> , Vermont Bar Journal (2022) (pgs. 12-16 of PDF on Canvas)		<u>Writing</u> Discuss tips for inclusive writing <u>Appellate Process</u> Discuss Argument section of brief: structuring and organizing arguments; different types of arguments; and hierarchy of authority

	10	Sept 29	Read pages 125-136 of the Berry textbook		Discuss dealing with adverse facts and authority Discuss Appellee, Respondent, and Reply briefs
6	11	Oct 4		Point Headings and portion of SOC due on Canvas by 8 a.m.	Research refresher Plan for writing the brief
	12	Oct 6	TBD		Guest Speaker
7		Oct 11	No Class (Fall break)		No Class (Fall break)
	13	Oct 13	-Read pages 141-172 of the Berry textbook -Come to class with any questions about the brief		Putting it all together Watch example of oral argument
8	14	Oct 18	Read pages 173-216 of the Berry textbook		Discuss oral argument
		Oct 19		First draft of brief due on Canvas by 8 a.m.	
	15	Oct 20	https://hbr.org/2015/06/breathing-is-the-key-to-persuasive-public-speaking#:~:text=For%202%20minutes%20a%20day,as%20speeches%20or%20difficult%20conversations (click on the links!)		Discuss oral argument
9		Oct 25	NO CLASS (Individual conferences)		NO CLASS (Individual conferences)

		Oct 27	NO CLASS (Individual conferences)		NO CLASS (Individual conferences)
10		Nov 1	NO CLASS (Individual conferences)		NO CLASS (Individual conferences)
	16	Nov 3	Prepare for practicing or judging oral arguments		Oral argument practice (in class)
11	17	Nov 8	Prepare for practicing or judging oral arguments		Oral argument practice (in class)
	18	Nov 10	Prepare for practicing or judging oral arguments		Oral argument practice (in class)
12*	19	Nov 15	Prepare for practicing or judging oral arguments		Oral argument practice (in class)
		Nov 17	No class (Oral arguments)		No class (Oral arguments)
13*		Nov 22	No class (Oral arguments)		No class (Oral arguments)
		Nov 24	No class (Thanksgiving)		No class (Thanksgiving)
14*		Nov 29	No class (Oral arguments)		No class (Oral arguments)
		Dec 1	No class (Oral arguments)		No class (Oral arguments)
15	20	Dec 6			Final class—debrief, celebration

***Oral arguments are tentatively scheduled to be held on the evenings of November 17, 21, 22, 28, 29, 30, and during the days on November 18 and 19.**

**APPENDIX A
Title Page**

The title page must appear as follows:

NO. XX-XXXX (Docket number)

In the

SUPREME COURT OF THE UNITED STATES

October Term, 20XX

(NAME OF PETITIONER - all in capital letters),

Petitioner,

v.

(NAME OF RESPONDENT - all in capital letters),

Respondent.

On Writ of Certiorari to
(Name of Lower Court)

BRIEF FOR (PARTY DESIGNATION)

Student's Name
Student's Phone Number
Attorney for (Party)