

FEDERAL COURTS, FALL 2012 SEMESTER, PROF. ROGER C. WILSON  
PREPARATION FOR FIRST CLASS

MATERIALS

Almost all readings for the class will be from the Hart and Wechsler casebook, The Federal Courts and The Federal System, 6<sup>th</sup> ed. (2009) (hereinafter “H&W”). I have not required the purchase of any other materials (including statutory or case supplements) than the main H&W book. The Constitution is at the first of the H&W book. Any important statutes or other supplementary material that we need to read will be readily available on the Internet.

FIRST CLASS

For the first class, after an overview of the course, we shall first discuss the nature of the federal judiciary, including important historical and constitutional principles that will underlie much of our studies to follow during the semester. Then we shall move to a detailed discussion of the history, sources, and development of the doctrine and institution of judicial review. That discussion will center on the seminal case, Marbury v. Madison, which largely defined the institution of judicial review for our federal courts system. After that, we shall consider a critical component principle of this doctrine, the prohibition against advisory opinions, in two threshold manifestations: the so-called requirement of finality (illustrated by U.S. v. Johnson) and the prohibition against feigned or collusive suits (illustrated by the opinion in Hayburn’s Case).

FIRST ASSIGNMENTS

Some of the assignments here are only optional, others informal. The most important, formal readings are specified as such below.

1. Peruse the Constitution, including Amendments 1-14. Most of it you do not need to study closely but instead just to read casually. However, do read closely Article III and Amendments 10, 11, and 14(1) and (5).
2. Historical Background Reading. Sometime during or before the first week or two of class, read H&W pp. 1-20 for useful historical background to our Constitution and related principles.
3. Substantive Background Reading. For the first class, read H&W pp. 20 – 47, again, not with great rigor but just casually, though attentively. This provides a nice overview of the federal judicial system that will be important for our studies to come.
4. Judicial Review: Development and Nature. Read and be prepared to discuss the excerpt from Marbury vs. Madison beginning at page 58 of H&W. Also read the introductory and supplemental material immediately preceding and following Marbury in H&W. The latter will help with an understanding of the opinion.
5. Advisory Opinions Prohibition. Read the Hayburn’s Case excerpt at H&W pp. 80-85. Read the excerpt from U.S. v. Johnson at pp. 94-96 of H&W and the note following that, from pp. 96-100.

6. [Optional] The (or An) End Result of Our Course. Solely for pleasure, at your leisure, you should enjoy LISTENING TO the oral argument before the U.S. Supreme Court in Hamdi v. Rumsfeld available at the following link:

[http://www.oyez.org/cases/2000-2009/2003/2003\\_03\\_6696/argument](http://www.oyez.org/cases/2000-2009/2003/2003_03_6696/argument)

Hamdi was an important case (which we shall take up later in our course) involving a challenge of the national-security-based executive detentions by the U.S. military at Guantanamo Bay. The oral arguments here provide a valuable view, at the outset of our semester, of how some of the principles we will learn in this course work in practice in litigation involving some of the most controversial issues in today's legal and political worlds, in legal arguments presented by some extremely able appellate lawyers. It well illustrates how arguments sometimes go at the Supreme Court from whose arguments and opinions many of our core legal principles come for this course. This is the use of the federal courts and federal-courts doctrines at its highest level. In the vernacular, this is "how it's done." It will help us to have a view at the outset of our course of where we might like to arrive, ourselves, at some point after taking the course.