



POLSC 612
The Judicial Process
Kansas State University
Summer 2012, 9:50-11:50, Waters 230

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Office: 220 Waters Hall, 532-0445
Hours: M-U 9:00-9:30am, or by appointment
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Course Description: This course examines the structure and operation of the American judicial system. We will consider activities at all levels of the judicial system, ranging from lawyers, juries, litigants, and state trial courts all the way to the U.S. Supreme Court. We will also discuss a number of the major issues confronting our legal system such as the propriety of judicial policymaking, judicial appointments, the politics of criminal justice, legal representation for the poor, the effectiveness of the jury system, tort reform, and the litigiousness of American society.

A central theme of the course will be to place courts and the principal actors in our legal system within their political and operational contexts. Although we will be discussing some court cases, we are mainly concerned with the law in action, not the law as written in books or as portrayed by the media. This approach leads us to compare society's images and expectations about law and our judicial system with the reality of how it operates. By the end of the semester, you should have a thorough understanding of the structure, process, and politics of American courts and the major issues surrounding our judicial system.

Required Texts:

Cardozo, Benjamin. *The Nature of the Judicial Process*. 1921, 2010. Quid Pro, LLC.

Neubauer, David and Stephen Meinhold. 2009. *Judicial Process: Law, Courts, and Politics in the United States*. 5th ed. Wadsworth.

Tananhaus, David S. *The Constitutional Rights of Children: In Re Gault and Juvenile Justice*. 2011. University Press of Kansas.

Readings and Discussion: Your regular attendance in class is essential. You will be tested not only on the required text readings, but also on lectures, discussions, and occasional in-class handouts. The format of the course will be lecture/discussion, emphasizing class discussion when possible. The readings are assigned in advance to give you the opportunity to consider certain issues before we discuss them in class. For each reading assignment, I have included questions that should help you review the material. You are expected to come to class prepared to discuss the readings.

Participation: Because the format of the course emphasizes class discussion, participation is an important component of student performance. Participation is worth 80 points toward your final grade. Participation means regular class attendance, completing the reading assignment for each class, AND contribution to class discussion on a regular basis with effective comments. Students who satisfy all of these requirements can expect to receive high marks for participation at the end of the semester.

Exams: There will be two regular exams and a final exam. Dates are given in the accompanying Course Outline. The regular exams will consist of 30-40 multiple choice questions and one or two

essay questions. Portions of the final exam will be cumulative in nature. A list of study questions will be handed out before each exam. My grading criteria for the essays is explained below. You should read it carefully so that we can avoid problems later.

If there is a problem with an exam date, it should be discussed with me *prior* to the date of the exam. Makeup exams will be granted only for absences that are recognized as valid by the University. *Written documentation is required.* The time and place of the makeup exam will be announced in class. Students who do not have a valid excuse or who fail to take the makeup exam will receive a “zero” grade. Students are expected to abide by the rules governing academic integrity and conduct as specified by the Honor Code. For more information refer to the Honor Council’s website at: www.ksu.edu/honor.

Paper Assignments: The first written assignment for undergraduate students consists of a review of Tanenhaus book. Graduate students are expected to write reviews of two supplemental books. The other writing assignment is a position paper. See the appendices for more information about these paper requirements.

Evaluation: Your grade will be based on the following criteria:

Exam 1 = 100 points

Exam 2 = 100 points

Final Exam = 120 points

Book Review #1 = 100 points

Book Review #2 = 100 points (graduate students only)

Position Paper = 100 points

Participation = 80 points

Total = 600 possible points (700 possible for graduate students)

I grade along the following point system: 100-90=A; 89-80=B; 79-70=C; 69-60=D; 59 and below=F. Because you have several opportunities to influence your grade, I will not consider extra credit work. Note: Only those students who come to class prepared and consistently make thoughtful contributions to class discussion will receive all the points for participation. Other levels of participation will be graded accordingly.

Grading Criteria for Essays: Some students feel that the grading of essay exams is a mysterious and inherently biased process. As your instructor, I will make every effort to explain my grading criteria and to be as objective as possible. It is your responsibility to prepare for the exams. Grading essay exams cannot be reduced to a science. The process involves more than searching for "key" words. Here are some of the things that I look for in an exam essay:

An "A" answer covers all the points asked within the question and then some. It provides clear, detailed explanations and uses examples to support the essay. It incorporates both reading and lecture materials into the essay. Above all, the answer shows a conceptual understanding of the material. A "B" answer covers all the points asked within the question. It provides clear explanations and examples and displays knowledge of the reading and lecture material.

A "C" answer generally covers all the points asked for in the question. It is basically a rehash of the lecture notes with little detail or explanation. A "D" answer fails to cover all the points required by the question. It does not demonstrate understanding of the reading or lecture material. Arguments are made with little or no supporting evidence. An "F" answer fails to cover any of the points required by the question. It is evident that the student has made no effort to prepare for the exam, read the text, or attend class.

Study questions are passed out several days before an exam. If you have a problem with a question it is your responsibility to see me before the exam. Any student with writing problems or anxieties about essay exams should see me as early in the semester as possible.

Important Dates:

Review of Tanenhaus..... June 8
Exam #1 June 11
Exam #2 June 20
Position Papers Due June 27
Final Exam June 29

University Policies

Statement Regarding Academic Honesty

Kansas State University has an Honor System based on personal integrity, which is presumed to be sufficient assurance in academic matters one's work is performed honestly and without unauthorized assistance. Undergraduate and graduate students, by registration, acknowledge the jurisdiction of the Honor System. The policies and procedures of the Honor System apply to all full and part-time students enrolled in undergraduate and graduate courses on-campus, off-campus, and via distance learning. The honor system website can be reach via the following URL: www.ksu.edu/honor . A component vital to the Honor System is the inclusion of the Honor Pledge which applies to all assignments, examinations, or other course work undertaken by students. The Honor Pledge is implied, whether or not it is stated: "On my honor, as a student, I have neither given nor received unauthorized aid on this academic work." A grade of XF can result from a breach of academic honesty. The F indicates failure in the course; the X indicates the reason is an Honor Pledge violation.

Statements for Academic Accommodations for Students with Disabilities

Any student with a disability that needs a classroom accommodation, access to technology or other assistance in this course should contact Disability Support Services and/or their instructor as early as possible.

Statement Defining Expectations for Classroom Conduct

All student activities in the University, including this course, are governed by the Student Judicial Conduct Code as outlined in the Student Government Association By Laws, Article VI, Section 3, number 2. Students that engage in behavior that disrupts the learning environment may be asked to leave the class.

Academic Freedom Statement

Kansas State University is a community of students, faculty, and staff who work together to discover new knowledge, create new ideas, and share the results of their scholarly inquiry with the wider public. Although new ideas or research results may be controversial or challenge established views, the health and growth of any society requires frank intellectual exchange. Academic freedom protects this type of free exchange and is thus essential to any university's mission.

Moreover, academic freedom supports collaborative work in the pursuit of truth and the dissemination of knowledge in an environment of inquiry, respectful debate, and professionalism. Academic freedom is not limited to the classroom or to scientific and scholarly research, but extends to the life of the university as well as to larger social and political questions. It is the right and responsibility of the university community to engage with such issues.

Course Outline:

INTRODUCTION AND COURSE SYLLABUS (June 4)

PERSPECTIVES ON LAW, COURTS, AND POLITICS (June 5)

Our Decentralized Legal System (June 5)

Perspectives: Jurisprudence (June 5)

Neubauer and Meinhold, Chapter 1

Cardozo, Benjamin. *The Nature of the Judicial Process*.

Frank, Jerome. "Facts are Guesses" (pdf file in Course Materials folder)

Questions to Consider: What are the major components of our judicial system? In what ways is our legal system political? How are courts different from other governmental and political institutions? How is mechanical jurisprudence different from social theories of law? What did the Realists have to say about the operation of our judicial system? Can judicial decision making be "value-free"?

Important Terms and Concepts: law, politics, jurisprudence, analytical jurisprudence, John Austin, C.C. Langdell, mechanical jurisprudence, Roscoe Pound, sociological jurisprudence, *Muller v. Oregon* (1908), legal realism, Jerome Frank, Louis Brandeis, Critical Legal Studies.

THE NATURE AND TYPES OF LAW (June 6)

Law and Social Values

Common Law v. Civil Law

The Adversary Process

Neubauer and Meinhold, Chapter 2

Questions to Consider: What is law? What is the relationship between law and justice? What are the sources of American law? What is the difference between a common law and civil law system? How does the adversary system operate? Does this process create problems for our legal system? Should our legal system adopt some of the features of a European civil law system?

Important Terms and Concepts: law, justice, adversary system, Islamic law, common law, civil law, discretionary choices, precedent, equity, *stare decisis*, dicta, judicial independence, tort, plaintiff, prosecutor, false defense, Sir William Blackstone, due process.

THE STRUCTURE OF OUR LEGAL SYSTEM (June 7-11)

Federal Courts (June 7)

Neubauer and Meinhold, Chapter 3

Questions to Consider: In what ways was the development of the lower federal courts political? How was judicial review established? How are the federal courts organized? What types of cases do they hear? What is the problem with federal caseloads? Why is our legal system decentralized? How is military justice different from federal and state justice?

Important Terms and Concepts: geographical jurisdiction, appellate jurisdiction, original jurisdiction, subject jurisdiction, diversity jurisdiction, district courts, appellate courts, *En banc*, rule of four, writ of certiorari, magistrate, venue, Judiciary Act 1789, federal questions, prisoner petitions.

State Court Structure and Reform (June 8)
The Juvenile Court System
Drug Courts

Neubauer and Meinhold, Chapter 4

Tananhaus, David S. *The Constitutional Rights of Children: In Re Gault and Juvenile Justice*

Questions to Consider: In general, how are state courts organized? Are there problems with state court organization and financing? Do urban trial courts deliver “assembly-line” justice? What are some of the changes advocated by court reformers? Should more juvenile offenders be tried as adults? What role has politics played in state court reorganization? Are drug courts an effective alternative to criminal trial courts? Should we end the war on drugs or reduce penalties for drug convictions?

Important Terms and Concepts: assembly-line justice, courts of record, *In re Gault*, police magistrates, trial de novo, Justice of the peace courts, small claims, municipal courts, juvenile courts, status offenses, *parens patriae*.

EXAM #1 (June 11)

PRINCIPAL ACTORS IN OUR JUDICIAL SYSTEM

Lawyers: Past and Present (June 12)

Right to Counsel in Criminal and Civil Cases (June 13)

Neubauer and Meinhold, Chapter 5

Documentary, *Scottsboro: An American Tragedy*, in class June 12

Questions to Consider: How do lawyers act as gatekeepers to the law? How has legal education changed over the years? What role do bar associations play in the practice of law? In what ways is the legal profession stratified? Why do lawyers in America generally suffer from a poor public image? Does the U.S. have too many lawyers? Should lawyers be prevented from presenting a false defense? Should government provide legal counsel for the poor in civil cases?

Important Terms and Concepts: American Bar Association, contingent fees, Brandeis brief, *Gideon v. Wainwright* (1963), Christopher Columbus Langdell, case method, integrated bar, Legal Services Program, public defender, National Lawyers Guild, pro bono publico.

Judges: State and Federal Judicial Selection (June 14)

Neubauer and Meinhold, Chapter 6

Questions to Consider: Should judges be elected or selected by merit? What role does politics play in the selection of judges at the state and federal level? Is there a consistent pattern in the social background of judges? Why was there so much opposition to the Bork nomination?

Important Terms and Concepts: judicial independence, Missouri Bar Plan, Senatorial courtesy, judicial elections, retention election, *Republican Party v. White* (2002).

Litigants, Interest Groups, Cases and the Media (June 15)

Neubauer and Meinhold, Chapter 7

Questions to Consider: Why are some litigants generally more successful than others? What tactics

do interest groups use in litigation? What is the difference between traditional and policy-oriented public lawsuits?

Important Terms and Concepts: amicus curiae briefs, class action, repeat players, traditional litigation, policy litigation, one-shotters, test cases, direct sponsorship.

Juries: History, Selection, Verdicts, and Controversies (June 18)

Neubauer and Meinhold, Chapter 12

Questions to Consider: Are jurors objective or subjective in rendering verdicts? Do extra-legal variables influence jury verdicts? Does jury composition have an effect on what they decide? Are juries capable of evaluating complex statistical and scientific evidence? Should juries sometimes bend or stretch the law in order to reach verdicts they consider just?

Important Terms and Concepts: voir dire, venire, hung jury, sequestering the jury, jury nullification, "scientific" jury selection, peremptory strikes, jury instructions.

EXAM #2 (June 19)

TRIAL COURTS: CRIMINAL

Preliminary Stages of Criminal Cases (June 20)

Neubauer and Meinhold, Chapter 8

Questions to Consider: What factors influence criminal case attrition? Does the criminal justice system discriminate against minorities and the poor? Should the exclusionary rule be abolished?

Important Terms and Concepts: bail, complaint, information, preventive detention, exclusionary rule, grand jury, indictment, information, nolle prosequi or nolle, preliminary hearing, probable cause, prosecutorial screening, *Miranda* warning.

Bargaining and Sentencing in Criminal Cases (June 21)

Neubauer and Meinhold, Chapter 9

Questions to Consider: Do defendants benefit from plea bargaining? Should the death penalty be abolished? Do tougher penalties reduce crime rates? How does mandatory sentencing affect the relationships among courtroom workgroups? Should judges mandate reforms of prisons and jails?

Important Terms and Concepts: courtroom workgroup, plea bargaining, parole, good time, probation, geography of justice, sentencing disparity, sentencing guidelines, bifurcated trial, civil forfeiture, victim impact statements, Prison Litigation Reform Act (1996).

TRIAL COURTS: CIVIL

How Civil Cases Begin (June 22)

Neubauer and Meinhold, Chapter 10

Questions to Consider: How is civil case procedure different from criminal procedure? What factors influence the decision to litigate? Is the United States experiencing a litigation crisis? Should there be a cap on jury awards in medical malpractice cases? Should our tort system be reformed? Is alternative dispute resolution preferable to litigation?

Important Terms and Concepts: hyperlexis, alternative dispute resolution (ADR), disputing pyramid, arbitration, mediation, litigation explosion, punitive damages, compensatory damages, strict liability, negligence, torts, tort reform.

How Civil Cases End (June 25)

Neubauer and Meinhold, Chapter 11

Questions to Consider: How are civil case decisions enforced? Do the “haves” often win in civil litigation? What factors influence settlement in tort cases? How does bargaining in typical divorce cases differ from divorce cases featured in the media?

Important Terms and Concepts: preponderance of the evidence, complaint, service, answer, default judgment, answer, motions, deposition, discovery, subpoena, interrogatory, pretrial conference, settlement, no-fault divorce,

APPELLATE REVIEW

Appellate Process (June 26)

Neubauer and Meinhold, Chapter 13

Questions to Consider: Why do judges decide cases the way that they do? How do state supreme courts make policy? Has the business of appellate courts changed over the years? Why are interest groups giving increasing importance to state and federal appellate courts?

Important Terms and Concepts: appellate jurisdiction, original jurisdiction, en banc, error correction, habeas corpus, judicial role, new judicial federalism.

THE U.S. SUPREME COURT

The Supreme Court: Deciding What to Decide (June 27)

Position Papers Due (June 27)

Neubauer and Meinhold, Chapter 14

Questions to Consider: How does the Court decide which cases will be placed on the docket? Why has the Supreme Court docket grown so small? How does the Court use doctrine of access to limit judicial review? What role has politics played in nominating Supreme Court Justices?

Important Terms and Concepts: advisory opinion, mootness, standing, ripeness doctrine, rule of four, writ of certiorari, exhaustion of remedies, political questions, solicitor general, amicus curiae, in forma pauperis.

The Supreme Court: The Justices and Their Decisions (June 28)

Neubauer and Meinhold, Chapter 15

Questions to Consider: Should a Supreme Court justice be an activist or a strict constructionist? What factors influence Supreme Court decision making? What role does the Court play in American politics? Is the Court the "least dangerous" or “most democratic” branch of government?

Important Terms and Concepts: briefs, oral arguments, opinion assignment, concurring opinion, dissenting opinion, attitudinal model, strategic model, legal model

FINAL EXAM (June 29)

Appendix A: Book Review

Each undergraduate student is responsible for writing a critical review of the Tanenhaus book. Graduate students must review a second book approved by me. Begin reading these books as early as possible before the due date of the papers in order to give yourself enough time to write a thoughtful review. The review should conform to the following substantive and stylistic requirements:

Substantive Requirements

1. Theory/Conceptual Framework: Where does the author place the book in terms of previous work in the field? What is/are the basic research issue(s) or argument(s)? How does the author explain the phenomenon to be studied?
2. Method: What method does the author use to examine the hypothesis or proposition? For example, does the author use case studies, statistical analysis, personal observation, historical analysis, or some other method(s)?
3. Findings: Briefly review the author's findings, analysis, and conclusions. Avoid a mechanical chapter-by-chapter summary. Focus on central arguments and topics. Were reforms or proposals provided to address some of the problems discussed in the book?
4. Critique: This is the most difficult but also the most important part of your paper. What theoretical, operational, or other methodological shortcomings, if any, can be identified? Is the author persuasive? Why, or why not? How do the findings change or add to what is already known about this topic? What image of our judicial system is presented in the book? Do the author's conclusions comport with other lecture and reading material in this class? Do you agree with the central argument(s) of the author? Be sure to evaluate any reform proposals. Did you learn anything by reading this book?

Stylistic Requirements

Your paper should be written in an essay format, not as an outline in response to the questions listed above. The paper should contain a title page with your name, class, and date. Papers must be typed, double-spaced, with one-inch margins. The paper should be 5-6 pages long with correct grammar and spelling. References to the text may be included in the body of the paper using parentheses (Scheck, p. 45). One or two sentence quotations from the text should be "enclosed in quotation marks" and followed with a page reference. Longer quotations should be blocked and properly cited. The Tanenhaus review is due June 8. The book will be discussed on that date. Papers handed in after the deadline will be penalized.

Appendix B: Position Paper

The purpose of this assignment is to develop your critical thinking and writing skills. As you research your topic, you will also improve your understanding of an important issue confronting our judicial system. The following guidelines are provided to assist you in your research:

Topic: I have provided some possible paper topics below. You are not limited, however, to writing on the questions provided in the list. If you prefer to write on another legal issue, phrase that issue in a yes-or-no question and submit it to me for approval. Generally, it is easier to write about a topic when you have some interest in, or knowledge of, your subject matter. Once you have selected a topic and question, you must decide which position to argue. Your decision to take a majority or minority opinion on an issue will have no impact on your grade. I am interested in the quality of the argument and the depth of your research. Remember, a rational, persuasive argument can be constructed to support either side of these issues. This will entail careful planning and research on your part. Submit the issue that you intend to research and a preliminary bibliography with at least five sources in writing on June 20. Your preliminary bibliography should include a few sentences about the content of each source.

Research: Search the library for information related to your topic. Good databases for legal research include Lexis-Nexis, Legal Trac, and JSTOR. Carefully record citations for any cases, quotes, statistics, or references you plan to use. You will need this information for the bibliography and endnotes. Your research may include online sources but these sources should *not* be the only source material and they should only constitute a small portion of your research.

Writing: Use an analytical outline as a guide when writing your paper. The opening paragraph should introduce the question or issue and the position taken by the author. The bulk of the paper should be the defense of your position. Use new paragraphs to separate ideas and arguments. At the end of each paragraph or in a separate paragraph following your main arguments, anticipate some of the criticisms of your position and attempt to refute or respond to them. Consider the consequences of your position for our judicial system. For example, if you argue the exclusionary rule should be abolished, how would the criminal justice system deter illegal police behavior? The final paragraph should merely summarize the main points of the paper -- do not introduce new ideas or make bold statements.

Formal Requirements: Style: The paper should contain a title page with your name, class, and date. The title should give the reader some idea of the topic and the author's position. Papers must be typed, double-spaced, with one-inch margins. All references, quotations, cases, and statistics should be properly cited and placed at the end of the paper. Consult an appropriate style manual for the correct format for endnotes. I like to use *A Pocket Style Manual*, 5th edition, by Diana Hacker. See www.dianahacker.com for details. If you have questions about citing sources please see me during office hours.

Length: The required length of the paper, about 6-7 pages, serves as a guideline. The length of any paper often depends on what claim you wish to defend and the arguments that you build to support that position. In fairness to all of your classmates, however, please limit papers to no more than ten, excluding references. Graduate students may go above that limit.

Due Date: The position papers are due on June 27. We will discuss the papers in class on that date. Papers handed in late will be penalized.

Possible Topics:

1. Should there be a national cap on jury awards in medical malpractice cases?
2. Should we require plaintiffs in civil cases to pay for the legal costs of the defendants if they lose the case?
3. Is the United States an excessively litigious society?
4. Should lawyers be prevented from presenting a false defense?
5. Should the American jury system be reformed?
6. Is justice for sale?
7. Should the exclusionary rule be abolished?
8. Should plea bargaining be abolished?
9. Should state judges be elected or appointed?
10. Should there be term limits for federal judges, including Supreme Court justices?
11. Does mandatory sentencing effectively deter crime?
12. Do sex offender residency and workplace restrictions violate constitutional rights?
13. Does the criminal justice system discriminate against minorities?
14. Should government provide legal representation to the poor in civil cases?
15. Should Supreme Court justices be bound by the original intent of the Framers?
16. Should we prohibit the use of the filibuster in the judicial confirmation process?
17. Should violent juvenile offenders be treated and punished as adults?
18. Do we need a victims' rights amendment to the Constitution?
19. Should jurors engage in jury nullification?
20. Should cameras be allowed in the Supreme Court during oral arguments?
21. Should the Constitution be viewed as a living, flexible document?

Appendix E: Web Sites Relating to Law and Courts

Although the Internet is not a substitute for a good library search, there is plenty of information online that you might find useful for studying law and the courts. For example, the Internet is now the place to go to find the text of Supreme Court opinions on the day that they are announced. You can also find the opinions of the U.S. Courts of Appeals and state supreme courts, caseload statistics, interest groups active in litigation, federal and state statutes, and lots of other legal information. Your textbook lists several good websites at the end of each chapter. Listed below are some websites relating to law and the courts.

Site: U.S. Supreme Court

Address: <http://www.supremecourtus.gov>

Content: Official page of the United States Supreme Court. Includes docket, case descriptions, and text of published opinions.

Site: Legal Information Institute, Cornell Law School

Address: <http://www.law.cornell.edu/supct>

Content: Full text decisions of the U.S. Supreme Court and a selection of historic cases as well.

Site: Death Penalty Information

Address: <http://www.deathpenaltyinfo.org>

Content: A clearinghouse for information on capital punishment. The site is anti-death penalty, but the statistical information on the site is accurate and comprehensive.

Site: The U.S. Constitution Website

Address: <http://www.usconstitution.net>

Content: Contains text of the U.S. Constitution and other founding documents. Also has summary of amendments proposed in each Congress and a list of popular ideas or concepts that are not found in the U.S. Constitution.

Site: U.S. Supreme Court Oral Argument Archive

Address: <http://www.oyez.org>

Content: Unedited, digitized oral arguments in landmark Supreme Court cases from October 1955 onward. The audio collection also includes FDR's famous fireside chat about packing the Supreme Court. Your computer will need RealAudio software to access and listen to the oral arguments.

Site: U.S. Federal Courts Home Page

Address: <http://www.uscourts.gov>

Content: Links to information on the federal courts.

Site: Washburn Law Library

Address: <http://www.washlaw.edu>

Content: Good links to Kansas state court decisions and statutes, and lots of other legal information.

Site: National Center for State Courts Home Page

Address: <http://www.ncsconline.org/>

Content: Links to information and data on state courts, including caseloads and juries.

Site: American Civil Liberties Union

Address: <http://www.aclu.org>

Content: ACLU position papers, court cases, and news. The group takes a broad interpretation of civil rights and liberties and it is actively involved in litigation.

Site: American Center for Law and Justice

Address: <http://www.aclj.org>

Content: An interest group that is active in litigating a conservative interpretation of civil rights and liberties issues.

Site: National Criminal Justice Reference Service

Address: <http://www.ncjrs.org>

Content: Links to information and data pertaining to the criminal justice system, including corrections, juvenile justice, and law enforcement.

Site: American Judicature Society

Address: <http://www.judicialselection.us/>

Content: This non-partisan society promotes the effective administration of justice at all levels of the judicial system. The site contains information on judicial selection and independence and links to other court administration sites.

Site: American Tort Reform Association

Address: <http://www.atra.org>

Content: A coalition of businesses, corporations, and associations advocating reform of our civil justice system. This site represents the pro-business perspective.