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### PSC 370.01: The Supreme Court and Judicial Politics

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Political Science 370  
The Supreme Court and Judicial Politics  
Spring 1999

Instructor: Jim Lopach, LA 348, 243-4829

Text

Walter F. Murphy and C. Herman Pritchett, Court, Judges, and Politics,  
4<sup>th</sup> ed., 1986

Course Overview

The purposes of this course are to provide an introduction to the workings of the judicial branch of government and to explore the role of the federal judiciary in the American political system. Students will be expected to read approximately 15 pages in the text for each class meeting and be prepared to participate in discussion. The class format will be discussion rather than lecture, with the instructor acting as discussion leader. The learning goals are student understanding of the judiciary's procedural and structural features, accurate analysis of course readings, and effective oral and written expression of this understanding and analytical ability.

Term Paper

Each student is required to write a term paper of no more than seven double-spaced pages of actual text. Suggestions for term paper topics are attached; the instructor must approve each student's selection. The introductory paragraph of the paper, a topical outline of the paper, and a list of sources to be used are due on March 4. The introductory paragraph should include a statement of your purpose, an overview of the paper's organization and contents, a brief discussion of the topic's importance and your likely conclusions, and sources to be used. Because PSc 370 is a "writing" course, the instructor will correct the introductory paragraph and return it for revision and inclusion in the final paper, which is due on April 22. Documentation of sources used can be included in parenthetical text notes tied to the bibliography, footnotes and a bibliography, or end notes and a bibliography. Grading criteria will be accuracy of content, coherence of argument, and correctness of writing.

Examination

There will be two examinations, a midterm and a final. The final examination will cover course material from the midterm examination to the end of the quarter. Both examinations will use definition and short-essay questions. The midterm examination will be held on March 11, and the final examination is scheduled for Wednesday, May 12, 10:10 to 12:10.

Grading

Class attendance and recitation	- 10% (20 points)	A = 180-200 points
Term paper	- 30% (60 points)	B = 160-179 points
Midterm examination	- 30% (60 points)	C = 140-159 points
Final examination	- 30% (60 points)	D = 120-139 points
		F = -119 points

SUGGESTIONS FOR TERM PAPERS

1. Lawyer's fees - how set, how collected, how regulated, impact on judicial process
2. Plea bargaining - roles of various actors and arguments for and against.
3. Pre-trial suppression hearing - features, purpose, results
4. Sentencing - example of legislative control and judicial discretion; reform trends; - U.S. Sentencing Commission; Mistretta v. U.S (488 U.S. 361)

5. Juvenile justice system - tradition, criticisms, jurisdiction, functions, procedures, case load, appeal, reform alternatives
6. Classification of lawyers in Missoula - use such indicators as social and economic background, education, memberships, income, clients, specialization, work accepted and refused (Martindale-Hubbel Law Directory)
7. Judicial review - its justification in a representative democracy and criticisms; living constitution vs. strict construction; e.g., Robert H. Bork, The Tempting of America (1990); Jesse H. Choper, Judicial Review and the National Political Process (1980); John Hart Ely, Democracy and Distrust (1981); Alexander M. Bickel, The Least Dangerous Branch (1962)
8. Judicial contempt power - powers of civil contempt, criminal contempt, and a comparison
9. Judicial selection in Montana - comparison of the elective system and the appointive system with emphasis on the judiciary article in the Montana Constitution and the 1972 debate in the Montana Constitutional Convention
10. Decisionmaking on the U.S. Supreme Court - use any two: Walter Murphy, Elements of Judicial Strategy; Bob Woodward, The Brethren; David O'Brien, Storm Center; Edward Lazarus, Closed Chambers
11. Office of Montana Attorney General - organization, duties, workload, budget, governmental relationships, staffing, achievements, problems
12. Office of Missoula City Attorney - same sub-topics as for #11
13. Public prosecutor - Office of Missoula County Attorney with emphasis on chief deputy county attorney with prosecuting function; same sub-topics as for #11
14. Public defender - organization in Missoula County, funding, duties, pay, workload, examples of cases, clients, record in court, alternatives
15. ASUM Legal Services - same sub-topics as for #14
16. Legal education - history and traditions, alternatives, innovations, Montana Law School curriculum reform
17. Montana Judicial Standards Commission - authorization in law, organization, purpose, duties, principles of judicial ethics, discipline of Montana judges
18. Montana Commission on Practice - authorization in law, organization, purpose, duties, principles of lawyer ethics, discipline of the Montana bar
19. Television and trials - philosophy of open procedures and conflict with judicial efficiency and courtroom decorum; lessons from O.J. Simpson case; court channel
20. Justice of the peace court - authorization in law, tradition, jurisdiction, functions, procedures, case load, decision making, appeal, administration, staffing, budget, strengths, criticisms, reform alternatives
21. Judicial immunity - purpose of doctrine, pro and con, recent use (Valentin v. Gates, cert. denied 1998)
22. Montana district court - same as for #20
23. U.S. district court - same as for #20
24. Montana Supreme Court - same as for #20

25. Law firm - comparison of two law firms from perspectives of staffing, organization, specializations, operations, administration, resources
26. Jury - tradition and philosophy, role vis'a vis judges, selection procedure and use of social scientists, behavior of members, developments in size and unanimity requirements
27. Grand jury - purpose and tradition, roles, procedures, alternatives, use by Ken Starr
28. Representational litigation - amicus curiae briefs, class actions, test cases, associational standing, litigating groups such as ACLU and NAACP
29. Judicial biography - review of judicial behavior literature and comparison of the Supreme Court Justice's background and decisions and opinions on Court:
 

a. William H. Rehnquist	l. Oliver Wendell Holmes
b. Thurgood Marshall	m. Sandra Day O'Connor
c. Warren E. Burger	n. Abe Fortas
d. William J. Brennan	o. Harry Blackmun
e. John Marshall Harlan	p. Louis Brandeis
f. William O. Douglas	q. John Marshall
g. Earl Warren	r. Roger B. Taney
h. Felix Frankfurter	s. Clarence Thomas
i. Hugo Black	t. Charles E. Hughes
j. Benjamin Cardozo	u. Ruth Bader Ginsburg
30. Indian courts - description of tribal government courts with respect to their organization, authorization, jurisdiction, conflicts with state courts, and reform proposals
31. Political trial - definition, examples, and critique; e.g., Clinton v. Jones
32. Office of U.S. Solicitor General - role, duties, official relationships, contribution to U.S. Supreme Court, examples
33. Law clerks - purpose, duties, and influence, especially on the U.S. Supreme Court (e.g., see W.O. Douglas, The Court Years; D. O'Brien, Storm Center)
34. Special juries - purpose and use in complicated civil suits (89 Yale Law Journal 1155)
35. U.S. Tax Court - purpose and duties, organization and procedures, critique
36. Child custody proceeding - description and critique of this aspect of family law with reform suggestions (e.g., 1996 Montana Domestic Relations Study Commission)
37. Jurisprudence - analysis of one of the major schools or movements in jurisprudence (e.g., review writings of Pound, Cardozo, Frank, Dworkin, Bork):
 

a. original intent	c. feminist jurisprudence
b. critical legal theory	d. sociological jurisprudence
38. Court martial - organization, purpose, and principal features of military courts and their relationship to federal judicial system
39. Selection of U.S. Supreme Court Justices - commentary on the process by a critique of the Robert Bork controversy or the Clarence Thomas controversy
40. U.S. Independent Counsel - reasons for the office, constitutionality upheld (Morrison v. Olson, 487 U.S. 654), criticisms of office, reform options