

1-2013

## PSCI 370.01: Courts and Judicial Politics

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### Recommended Citation

Lopach, James J., "PSCI 370.01: Courts and Judicial Politics" (2013). *Syllabi*. 828.  
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PSCI 370  
Courts and Judicial Politics  
Spring 2013

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Text: Walter F. Murphy, C. Herman Pritchett, and Lee Epstein Court, Judges, and Politics, 6<sup>th</sup> ed., 2006

### Course Overview

The purpose of this course is to provide an introduction to the role and workings of the judicial branch of government in the American political system. Students will be expected to read approximately 10 pages in the text for each class meeting. The class format will be lecture and discussion, with the instructor acting as discussion leader. The learning goals are student understanding of the judiciary's procedural, structural, and political features, accurate analysis of course readings, and effective oral and written expression.

### Optional PSCI 400 Term Paper (ONLY for students enrolled in PSC 400)

The PSCI 400 term paper will be no more than twelve double-spaced pages of text, not counting the bibliography. Possible term paper topics are listed below. In a preliminary meeting, the instructor will approve each student's topic and provide guidance on the paper's organization, sources, method of analysis, and documentation. On February 22, a preliminary submission of at least five pages is due, which will contain the paper's introductory section, a topical outline of the paper, and an annotated list of sources to be used. The introductory section should include the paper's topic, the paper's thesis statement, a summary of the paper's contents, and the paper's likely conclusion. The instructor will correct these materials, meet with the student, and return the introductory section for revision and inclusion in the final paper, which is due on April 26. Citation to sources can be included in parenthetical text notes tied to the bibliography (consult the instructor about this format), or footnotes and a bibliography, or end notes and a bibliography (see *The Chicago Manual of Style* for footnote, endnote, and bibliography guidelines). Grading criteria will be accuracy of content, coherence of argument, and correctness of writing (that is, grammar, syntax, diction, transitions).

### Examinations

There will be three examinations. The final examination will cover course material from the second examination to the end of the semester. Each examination will use definition and short-essay questions. The first two examinations will be held on March 1 and March 29. The final examination is scheduled for Monday, May 13, at 10:10 a.m.

### Grading

The first two exams can earn 30 points each; the final exam can earn 45 points. Course grades will be assigned using the following 100-point grading system: A = 94-100; A- = 90-93; B+ = 87-89; B = 83-86; B- = 80-82; C+ = 77-79; C = 73-76; C- = 70-72; D+ = 67-69; D = 63-66; D- = 60-62; F = 59 and lower. Thus, students will have the opportunity to earn five extra-credit

points (30 + 30 + 45 = 105). For the credit/no-credit grading option, a grade of D- and above will count as "credit."

## Holidays

February 18 and April 1-5

### SUGGESTIONS FOR PSC 400 TERM PAPERS

1. Plea bargaining - roles of various actors and arguments for and against
2. Alternate dispute resolution - history, examples, and critique of ADR
3. Sentencing - legislative control of judicial discretion; U.S. Sentencing Commission; Mistretta v. U.S. (488 U.S. 361); U.S. v. Booker (160 LEd2d 621)
4. Juvenile justice system - evolution, jurisdiction, functions, procedures, case load, criticisms, reform alternatives
5. Judicial review - its justification in a representative democracy and criticisms; describe and compare any two of the following: Robert H. Bork, The Tempting of America; Jesse H. Choper, Judicial Review and the National Political Process; John Hart Ely, Democracy and Distrust; Alexander M. Bickel, The Least Dangerous Branch; David M. O'Brien, Storm Center; Lawrence H. Tribe, God Save This Honorable Court
6. Judicial contempt power - civil contempt and criminal contempt and a comparison of the two
7. Judicial selection - comparison of the elective system and the appointive system with emphasis on the judiciary article in the 1972 Montana Constitution and the debate in the Montana Constitutional Convention
8. Decisionmaking on the U.S. Supreme Court – describe and compare any two of the following: Walter Murphy, Elements of Judicial Strategy; Bob Woodward, The Brethren; David O'Brien, Storm Center; Edward Lazarus, Closed Chambers; Phillip Cooper, Battles on the Bench
9. Office of Montana Attorney General - organization, duties, workload, budget, governmental relationships, staffing, achievements, problems, examples of cases, the incumbent attorney general
10. Office of Missoula City Attorney - same sub-topics as for #9
11. Office of Missoula County Attorney - same sub-topics as for #9
12. Public defender - in Missoula County or in United States district court: funding, duties, pay, staffing, workload, examples of cases, record in court, alternative approaches, criticisms and possible reforms
13. ASUM Legal Services - same sub-topics as for #2
14. Legal education - history of American legal education, alternative philosophies and

pedagogies, recent innovations, case study of the curriculum and pedagogical philosophy of the UM Law School

15. Montana Judicial Standards Commission - authorization in law, organization, members, purpose, duties, principles of judicial ethics, record of disciplining Montana judges
16. Montana Commission on Practice - authorization in law, organization, members, purpose, duties, principles of lawyer ethics, record of disciplining the Montana bar
17. Television and trials - philosophy of open procedures and conflict with judicial efficiency and effectiveness; lessons from O.J. Simpson case
18. Justice of the peace court – selection procedure, authorization/jurisdiction, evolution, procedures, case load, decision making, appeal, sitting judge(s), staffing/administration, budget, criticisms, reform alternatives, observation of a case
19. Montana district court - same as for #18
20. U.S. district court - same as for #18
21. Montana Supreme Court - same as for #18
22. Law firm – study of one law firm or comparison of two law firms from perspectives of staff resources, lawyers' backgrounds, clients, organization, specializations, administration, research and technology resources, representative cases, pro bono work
23. Jury - tradition and philosophy, jury's role vs. judge's role, selection procedure and use of social scientists, behavior of members, size and unanimity requirements, jury nullification, special juries (e.g., 89 Yale L.J. 1155), reform proposals
24. Grand jury - purpose and tradition, roles, procedures, alternatives, use by Kenneth Starr in Clinton scandal or by Patrick Fitzgerald in the Scooter Libby case, reform proposals
25. Representational litigation - amicus curiae briefs, class action suits, test cases, litigating groups such as ACLU, NAACP, Sierra Club, Rocky Mountain Legal Foundation
26. Judicial biography – the theory of judicial behavior, the justice's pre-court life, service on the Supreme Court, comparison of the justice's background to decisions and opinions on the Court, conclusion about relationship between personal life and judicial behavior
  - William H. Rehnquist
  - Thurgood Marshall
  - Warren E. Burger
  - William J. Brennan
  - John Marshall Harlan
  - William O. Douglas
  - Earl Warren
  - Felix Frankfurter
  - Hugo Black
  - Benjamin Cardozo
  - Oliver Wendell Holmes
  - Sonia Sotomayor
  - Sandra Day O'Connor
  - David Souter
  - Harry Blackmun
  - Louis Brandeis
  - John Marshall
  - Roger B. Taney
  - Clarence Thomas
  - John Paul Stevens
  - Ruth Bader Ginsburg
  - John Roberts
  - Samuel Alito
  - Elena Kagan

27. Tribal courts – regarding American Indian courts in general, their history, authorization and jurisdiction, purpose, organization, successes, staffing, problems, reform proposals; case study of one tribal court
28. Office of U.S. Solicitor General - history, duties, official relationships, contribution to U.S. Supreme Court, examples of incumbents
29. 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; Tinsley E. Yarbrough, The Rehnquist Court and the Constitution; John Oakley, Law Clerks and the Judicial Process)
30. Advertising by lawyers - history, 1st amendment issues, kinds of advertising, ethical issues, effectiveness; ban-on-attorney-solicitation case (*Florida Bar v. Went For It, Inc.*, 132 L Ed 2d 541)
31. U.S. Tax Court - purpose and duties, organization and procedures, critique
32. Child custody proceeding - history, description of procedures used today, critique, and reform suggestions
33. Legal philosophy - analysis of one of the major schools of jurisprudence (e.g., original intent – Antonin Scalia and/or Robert Bork; adaptive – Stephen Breyer and/or William Brennan; law and economics – Richard Posner; sociological – Roscoe Pound and/or Benjamin Cardozo; feminist – Andrea Dworkin and/or Catherine MacKinnon; realism – Jerome Frank)
34. Courts martial – history and principal features of military courts and their relationship to federal judicial system
35. Military tribunals – analysis of Guantanamo Bay controversy
36. Selection of U.S. Supreme Court Justices - commentary on the process by a case study of Robert Bork, Clarence Thomas, John Roberts, Samuel Alito, Sonia Sotomayor, Elena Kagan
37. U.S. Independent Counsel - reasons for the office, constitutionality upheld (*Morrison v. Olson*, 487 U.S. 654), criticisms of office, reform options, 1999 Congressional debate, termination of office
38. History of the U.S. Supreme Court - analysis of one of the Court's eras, e.g.: Herman Schwartz, The Burger Years; Bernard Schwartz, The Unpublished Opinions of the Warren Court; E. Vincent Blasi, The Burger Court; C. Herman Pritchett, The Roosevelt Court; Tinsley E. Yarbrough, The Rehnquist Court and the Constitution; Mark Tushnet, The Warren Court; William Leuchtenburg, The Supreme Court Reborn in the Age of Roosevelt
39. Judicial interpretation - overview, comparison, and critique of Antonin Scalia, A Matter of Interpretation (1977) and Stephen Breyer, Active Liberty (2005)