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Spring 2-1-2008

### PSC 370.01: Courts and Judicial Politics

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Political Science 370  
Courts and Judicial Politics  
Spring 2008

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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 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. 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.

Term Paper (ONLY for students enrolled in PSC 300 or PSC 400; see suggested topics below)

The term paper will be no more than seven double-spaced pages of text, not counting the bibliography. 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 3. The introductory paragraph should include the paper's theme, an overview of the paper's contents, and a brief discussion of the topic's importance. The instructor will correct these materials and return them for revision and inclusion in the final paper, which is due on April 18. Citation to sources used can be included in parenthetical text notes tied to the bibliography (see the instructor about this format), 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. The final examination will cover course material from the first examination to the end of the semester. Each examination will use definition and short-essay questions. The midterm examination will be held on March 6. The final examination is scheduled for May 8, at 10:10 a.m.

### Grading

Each of the two examinations can earn a maximum of 50 points. The instructor, at his discretion, can award up to 10 extra-credit points for excellence in class recitation. The course grades will be determined as follows: 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. For the credit/no-credit grading option, a grade of D- and above will count as "credit."

## SUGGESTIONS FOR PSC 300 and PSC 400 TERM PAPERS

1. Plea bargaining - roles of various actors and arguments for and against
2. Alternate dispute resolution - history of ADR with examples and critique
3. Sentencing - legislative control and 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; use 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 - use 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, the incumbent
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 United States district court: funding, duties, pay, staffing, workload, examples of cases, record in court, alternatives, contemporary criticisms
13. ASUM Legal Services - same sub-topics as for #12
14. Legal education - history and evolution, alternatives, recent innovations, Montana Law School approach
15. Montana Judicial Standards Commission - authorization in law, organization, purpose, duties, principles of judicial ethics, discipline of Montana judges

16. Montana Commission on Practice - authorization in law, organization, purpose, duties, principles of lawyer ethics, discipline of 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 - authorization in law, tradition, jurisdiction, functions, procedures, case load, decision making, appeal, administration, staffing, 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 - comparison of two law firms from perspectives of staff resources, lawyers' backgrounds, clients, organization, specializations, administration, research 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 (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 - review of judicial behavior literature and comparison of the Supreme Court Justice's background to decisions and opinions on Court:
  - a. William H. Rehnquist
  - b. Thurgood Marshall
  - c. Warren E. Burger
  - d. William J. Brennan
  - e. John Marshall Harlan
  - f. William O. Douglas
  - g. Earl Warren
  - h. Felix Frankfurter
  - i. Hugo Black
  - j. Benjamin Cardozo
  - k. Oliver Wendell Holmes
  - l. Sandra Day O'Connor
  - m. David Souter
  - n. Harry Blackmun
  - o. Louis Brandeis
  - p. John Marshall
  - q. Roger B. Taney
  - r. Clarence Thomas
  - s. John Paul Stevens
  - t. Ruth Bader Ginsburg
27. Indian courts - regarding one tribal government court: purpose, organization, authorization, successes, staffing, jurisdiction, problems, reform proposals

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 (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. Jurisprudence - analysis of one of the major schools (e.g., original intent, law and economics, sociological, feminist); review writings of Roscoe Pound, Benjamin Cardozo, Jerome Frank, Andrea Dworkin, Robert Bork, Catherine MacKinnon, or Richard Posner
34. Court martial - principal features of military courts and their relationship to federal judicial system; military tribunal proposals
35. Selection of U.S. Supreme Court Justices - commentary on the process by a case study of Robert Bork, Clarence Thomas, John Roberts, or Samuel Alito
36. 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
37. History of the U.S. Supreme Court - analysis of one era, 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
38. Judicial interpretation – overview, comparison, and critique of Antonin Scalia, A Matter of Interpretation (1977) and Stephen Breyer, Active Liberty (2005)