

Political Science 515: Politics of **Legal Decision Making**  
Fall 2000

Class Meeting: 2:30 - 4:18, Tuesdays and Thursdays  
Location: Denney Hall 214  
Instructor: Prof. Kathleen McGraw Derby Hall 2066, 292-3913 mcgraw.36 @  
osu.edu  
Office Hours: 1:00 - 2:00, Tuesdays and Thursday, or by appointment

**COURSE DESCRIPTION**

This course is designed to be an overview of the literature relating social science theories and research to the law. The course focuses on the criminal justice system (rather than civil or military justice). The substance of the course is organized around the key "decision makers" involved in a criminal case: offenders, police, prosecutors, juries, and judges. We will examine legal assumptions about how these different actors should think and behave as well as evidence from social science research assessing the validity of these assumptions. Two critical underlying themes will arise throughout the course. First, we will consider appellate courts' use of relevant social science evidence in their decisions that have shaped and defined the criminal law. The second theme involves consideration of the different values, often in conflict, that underly our opinions, as well as those of legal authorities, about the proper functioning of the legal system. The primary objectives of the course are:

- (1) to learn how to compare and contrast social science and legal modes of inquiry
- (2) to consider how and when empirical data can be used to understand and change the criminal justice system
- (3) to consider the use and misuse of social science data by the courts, and
- (4) to stimulate reflection on the values underlying our own, and attitudes about the criminal justice system.

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## **READINGS**

1. Wrightsman, Lawrence S, Michael T. Nietzel, and William H. Fortune. (1998). Psychology and the legal system. (4th edition) Pacific Grove, CA: Brooks/Cole Publishing. Abbreviated "WNK" in syllabus.

2. Reading packet: A reading packet is available at the Cop-Ez at Tuttle. This packet consists of (1) full-length scholarly articles and book chapters, (2) short newspaper or articles, (3) informational figures and tables, and (4) amicus curiae briefs submitted to the Supreme Court. These are ordered in the packet in the sequence in which they appear on the syllabus, and are marked by an asterisk on the syllabus.

This course requires a lot of reading. It is to your advantage to have completed as much of the reading as possible prior to the scheduled class meetings. It is also to your advantage that you attend class on a regular basis, as I integrate and simplify "complex" reading material, as well as introduce material that is not part of the assigned reading, in lectures.

NOTE: If you have any condition, such as a physical or mental disability, which will make it difficult for you to carry out the work as I have outlined it, or which will require extra time on examinations, please notify me in the first two weeks of the course so that we can make appropriate arrangements.

## **Method of Evaluation**

Your grades will be based on two exams and two written assignments.

### **Information about the exams:**

1. There will be a midterm examination, scheduled during a regular class period in the middle of the quarter, and a final examination scheduled during final exam week.
2. Each exam is worth 35% of your final grade. A total of 100 points can be "earned" in the class, so each exam will be worth 35 points towards that total.
3. The exams are noncumulative -- the final exam will be based only on material covered after the midterm.
4. Each exam will consist of multiple choice and short answer questions.
5. You are responsible for all assigned readings and all information discussed in class.
6. I will provide a study guide prior to each exam.
7. Those who do not take an exam at the scheduled time -- regardless of reason -- will be given a more difficult make-up exam consisting of long essay questions.

## Wriffen Assignments

### Short Assignment # 1

The first assignment is due early (actually, the third day of class), should be short (2-5 pages), and contributes 5% (5 points) to your final grade. The paper is due before the start of class on Thursday, Sept.28. If you are unable~~or unwilling to attend class that day, you may either place the paper under my office door before class, or hand it in to a political science department staffperson, or fax it to me (292-1146). Late papers will be penalized according to the following scheme:

- 1points will be deducted from papers that are late (after the start of class at 2:30) but still turned in the calendar day they are due.
- 2points will be deducted from papers received Friday after the due date.
- 3points will be deducted from papers turned in after Friday (Saturday through Tuesday, October 3 at the start of class).
- No papers will be accepted after Tuesday, October 3.

The first assignment **is:** *Carefully read the Packer (1968) article, and WNK's accompanying discussion (pp.12-14). Write an essay incorporating each of the following five points:*

- (a) *Summarize the defining characteristics of the crime control and due process models.*
- (b) *What do you see as the advantages and disadvantages of each?*
- (c) *Which more closely corresponds to your own values?*
- (d) *Which do you think more closely characterizes the American Criminal Justice System in the year 2000, and why?*
- (e) *If you were in the position of recommending one model over the other to a society in the process of developing a system of criminal justice, which would you recommend and why?*

What I am looking for in this papers is evidence that you have done the assigned reading and thought carefully about it. Papers will be evaluated according to the following criteria

- (1) clarity and organization in expression of ideas
- (2) grammar, spelling and neatness,
- (3) careful attention to identifying and referencing sources and quotes taken from the readings
- (4) addressing all aspects of the stated question
- (5) evidence of having carefully read the relevant reading and thought carefully about it.

The second assignment is due at the end of the quarter, will be rather long (20 pages?), and will contribute 25% (25 points) to your final grade. The paper is due Thursday, Nov.

30. If you are unable or unwilling to attend class that day, you may either place the paper under my office door before class, or hand it in to a political science department staffperson, or fax it to me (292-1146). Late papers will be penalized according to the following scheme:

- 2.5 points will be deducted from papers that are turned in on Friday, December 1
- 5 points will be deducted from papers that turned in over the weekend (Saturday and Sunday, December 2 and 3).
- 10 points will be deducted from papers turned in Monday through Wednesday, December 4-6.
- No papers will be accepted after Wednesday, December 6.

In the paper, you will analyze a 'famous' 20<sup>th</sup> century criminal trial by applying the concepts and principles learned in this course. Your information source for the trial will be the 'famous trials' website developed by Douglas Linder, a professor at the Univ. of Missouri-Kansas City Law School. The address for the website is:

<http://www.umkc.edu/famoustrials/>

There you will find a list of 16 trials (as of this writing). Not all of the trials at the website are suitable for this course and this assignment, therefore you are limited to the following eight trials (all of which are 20<sup>th</sup> century criminal trials):

- Bill Haywood Trial (1907)
- Leopold and Loeb Trial (1924)
- Sweet Trials (1925 and 26)
- Scottsboro Trials (1931-37) focus on first 1931 trial
- Hauptmann 'Lindbergh Kidnapping' Trial (1935)
- Mississippi Burning Trial (1967)
- Chicago Seven Conspiracy Trial (1969-70)
- O. J. Simpson Trial (1995)

You must choose one of the eight trials. Read through all of the information (summaries, the trial transcripts, newspapers accounts if available, appellate court decisions if the cases were appealed). Your goal is to fully familiarize yourself with the case. **The best place to begin is the "Trial Account" of each case written by Linder, as these** provide an overview of the charges, the trial and the subsequent events. You should also be aware that not all of the materials posted to the site are intended to be objective, impartial accounts - some are journalistic, some historical biographies with a definite point of view, some archival documents from the era. There is no **need** to go beyond the Linder webs ite for this assignment, and you will not receive extra credit for

**doing extra research. However, if you do, you must fully document all other sources. Direct quotes from the Linder website must be fully documented.**

Because all of the cases are very different, the final papers will vary widely. Listed below are a number of questions and considerations that you should address in the paper. You will note that the considerations parallel very closely the issues we covered in class. **You should refer to *relevant* readings, research studies, appellate late decisions, and lecture notes when discussing each consideration. Note also that I use the plural below, although 4 of the cases involve a single defendant.**

### **Issues to be addressed in the final paper**

1. Very briefly (2 or 3 paragraphs), describe the case (the defendants, the time and place, the crime with which they were charged)
2. What theory or theories of criminal behavior might best account for why the defendants became criminals (or, in the case of the innocent, why they were likely to be charged as criminals)?
3. Did any questions of improper police procedures arise in this case?
4. If the case involved eyewitness testimony, were there any circumstances that might create doubts about the validity of that testimony?
5. Did the defendants confess? and if so, are there any circumstances that might create doubts about the voluntariness of the confession?
6. Did any issues involving the grand jury, bail, or plea bargaining develop?
7. Was the trial heard by a judge or jury? If a jury, describe how the jury was selected and its resulting composition in terms of the many principles we discussed in this section of the course. Did any constitutional questions about the jury arise?
8. Did any questions about evidence admissibility arise?
9. Did the defendants put up a defense other than 'not guilty', and if so, what was the defense? Was it a defense of necessity or an excuse? Were there any issues about the mental state of the defendant at the time of the crime or the time of trial?
10. What was the verdict; if the defendants were found guilty, what was the sentence? What best accounts for the verdict and sentence (in popular accounts of the time and in your more detached expert opinion?)
11. Were the cases appealed? and if so, what was the legal basis of the appeal, and

12. If this crime and trial had occurred in the year 2000, how would the procedures and outcomes likely to be different? There are two separate issues to be addressed here: (1) what changes in trial and legal procedure (including sentencing and appeals) have occurred that might change the course of the trial and its aftermath and (2) how might a different social and historical, era, and the accompanying; values, have produced a different course of events? **[this question is very important and must be answered carefully]**

13. Did any aspect of the case turn on social science evidence? Could any aspect of the case have turned on social science evidence?

14. What is your reaction to the case? Was justice served (in the crime control or due process sense, or both)?

A word to the wise: You can and should be working on this paper throughout the quarter. This means you should make a decision fairly quickly as to which 'famous trial' you will write about. This will facilitate your ability to apply the relevant course concepts as we move through the quarter.

**The paper grade will be based upon:**

1. your ability to link explicitly the elements of the case and trial with relevant course materials
2. your thoughtful discussion of the 14 questions above, as relevant to the trial
3. clarity and organization in expression of ideas
4. grammar, spelling and neatness
5. careful attention to identifying and referencing sources and quotes from the readings and the case materials.

## LECTURE, READING, ASSIGNMENT, and EXAM SCHEDULE

### 1. Th, Sept.21: Introduction to the course

### 2. T, Sept.26: The epistemologies of the law and social science

WNK, Chapter 2: Psychologists and the Legal System

WNK, Chapter 1: The Fourth Dilemma: Science versus the Law as a Source of Decisions (pp.23-26)

- \* Haney, Craig. (1990). [Excerpts from] Psychology and legal change: On the limits of a factual jurisprudence. *Law and Human Behavior*4: 147-199.

### 3. Th, Sept.28: Value conflicts and dilemmas in legal decision making

WNK, Chapter 1: Impossible Choices (pp.9-23)

WNK, Chapter 3: Legality and Morality (pp.52-59)

- \* Packer, Herbert. L. (1968). Two models of the judicial process. From *Limits of the criminal sanction*. Stanford University Press.

\*\*\*\*\* ~ # 1 due Thursday, Sept.28 before \*\*\*\*\* \*\*

### 4. T, Oct. 3: The appellate process and the Supreme Court

- \* Baum, Lawrence (1990). Appellate courts: The process (pp.267-295); The Supreme Court (pp.34-36). From *American courts: Process and policy*. Houghton Mifflin.

### 5. Th, Oct. 5: Theories of criminal behavior

WNK, Chapter 5: Theories of Crime

- \* Keiman, Mark. (1999). Getting deterrence right: Applying tipping models and behavioral economics to the problems of crime control. *Perspectives on Crime and Justice: 1998-1999 Lecture Series*. National Institute of Justice, of the U.S. Department of Justice.

**6. T, Oct.10:****Police Procedure; Rights of the Accused and of Victims**

WNK, Chapter 6: The police and the criminal justice system

- \* Weisburd, David and Rosann Greenspan. (May, 2000). Police attitudes toward abuse of authority: Findings from a national study. *Research in Brief*. National Institute of Justice, of the U.S. Department of Justice.

WNK, Chapter 9: The rights of victims and rights of the accused

- \* Greenhouse, Linda. (June 27, 2000). Justices reaffirm Miranda rule, 7-2; excerpts from the decision. *The New York Times*.
- \*Greenhouse, Jan. (December 9,1998). High Court, 9-0, restricts police traffic-stop searches. *The New York Times*.
- \* Marx, Matthew and Connie Higgins. (December 21,1998). Ruling on searches not expected to affect Ohio procedures. *The Columbus Dispatch*.
- \* Barr, Stephen. (Monday, April 10, 2000). Study finds wide disparities in intrusive searches. *The Washington Post* OPTIONAL: For the full GAO report, go to <http://www.gao.gov/new.items/Q~00038.~df>

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**7. Th, Oct.12:****Previous topic continued****8. T, Oct.17: Eyewitnesses**

WNK, Chapter 7: Crime Investigations: Eyewitnesses

Wells, G., M. Small, S. Penrod, R. Malpass, S. Fulero, and C. Brimacombe. (1998). Eyewitness identification procedures: Recommendations for lineups and

photospreads. *Law and Human Behavior* 22:603-647.

OPTIONAL: For the Department of Justice's manual incorporating the suggestions from the Wells et al research, go to [http://www.ncirs.or~dfiles1\\_mull\\_78?40.pdf](http://www.ncirs.or~dfiles1_mull_78?40.pdf) (Eyewitness evidence: A guide for law enforcement)

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**9. Th, Oct. 19: Lie detection and confessions WNK, Chapter 8:**

**Identification and Evaluation of Criminal Suspects**

- \* **Kassin, Saul. (1997). The psychology of confession evidence. *American Psychologist* 52:221-233.**

**10. T, Oct.24:**

**11Th, Oct26:**

WNK, Chapter 10:

- \* Plea Bargaining.

**Midterm Examination**

**Between Arrest and Trial - Bail, Plea Bargaining and the**

**Grand Jury**

**Between Arrest and Trial**

**(1999). *C Q Researcher* 9:113-136.**

**12. T, Oct.31: Juries (Selection, Evidence, Deliberation, and Verdicts)**

**(A more detailed reading guide and outline will be distributed)**

WNK, Chapter 13: The Trial Process

WNK, Chapter 14: Jury Representativeness and Selection

WNK, Chapter 15: Assumptions and reforms

- \* Dershowitz, Alan M. (Dec. 1831999). Why justice had to get out of town. *The New York Times*.
- \* Heuer, Larry and Steven Pen rod. (1996). Increasing juror participation in trials through note taking and question asking. *Judicature* **79: 256-262**.
- \* Saks, Michael J. (1996). The smaller the jury, the greater the unpredictability. *Judicature* 79:263-265.
- \* Science in the courtroom. (1993). *CQ Researcher* 39:913-936.
- \* Jurors' handbook: A citizens' guide to jury duty. Pamphlet put out by the Fully Informed Jury Association, from the website [www.fija.org](http://www.fija.org)

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**13. Th, Nov. 2:                      Juries, continued**  
**14. T, Nov. 7:                      Juries, continued**

**15. Th, Nov. 9:**

**Mental States: Competence, Excuses and Justifications**

WNK, Chapter 11: Competence and Insanity

WNK, Chapter 16: Offenders as victims (pp.414-415); battered women (pp.420-422)

- \* Katz, Leo. (1987). Necessity, the mother of invention (pp.17-38 and 62-81). From *Bad acts and guilty minds: Conundrums of the criminal law*. Univ. of Chicago Press.
- \* Dershowitz, Alan. (1994). Introductory chapter from *The Abuse Excuse: Cop-Outs, Sob Stories, and other Evasions of Responsibility*. Little, Brown. (Note that the Appendix from this book is also included in the packet, but that is there only for your perusal, it is not required reading).

**16.T, Nov.14:**

### **Children in the Criminal Justice System**

WNK, Chapter 17: Children's Rights in Society; Rights of Children in the Legal System (pp.442-458)

- \* Goodman et al (1991). Child witnesses and the confrontation clause: The American Psychological Association brief in Maryland v. Craig. *Law & Human Behavior* 15:13-29.
- \* Bruck, Maggie and Stephen J. Ceci. (1995). Amicus brief for the case of State of New Jersey v Michaels: Suggestibility of child witnesses. *Psychology, Public Policy, and Law* 1:272-322.

**17.Th, Nov.16:**

### **Sentencing and Punishment**

WNK, Chapter 18: Punishment and Sentencing (pp.470-481)

- \* Ton ry, Michael. (September 1999). The fragmentation of sentencing and corrections in America. *Sentencing and Corrections: Issues for the 21st Century*. National Institute of Justice, of the U.S. Department of Justice.
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- \* Gottfredson, Don M. (November 1999). Effects of judges' sentencing decisions on criminal careers. *Research in Brief*. National Institute of Justice, of the U.S. Department of Justice.
  - \* Parent, Dale, et al. (January 1997). Key legislative issues in criminal justice: Mandatory sentencing. *Research in Action*. National Institute of Justice, of the U.S. Department of Justice.
  - \* Parent, Dale, et al. (January 1997). Key legislative issues in criminal justice: Transferring serious juvenile offenders to adult courts. *Research in Action*. National Institute of Justice, of the U.S. Department of Justice.
  - \* Bradsher, Keith. (Nov. 21,1999). Fear of crime trumps the fear of lost *New York Times*.

18.T, Nov.21: **Sentencing and Punishment, continued.**

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19. T, Nov.28:

### **The Death Penalty**

WNK, Chapter 18: The Death Penalty (pp.481-492)

- \* Death Penally Update. (1999). *CO Researcher* 9:1-24.
- \* Bersoff, Donald M. (1987). Social science data and the Supreme Court: Lockhart as a case in point; *Lockhart v. McCree*: Amicus curiae brief for the American Psychological Association. *American Psychologist* 42:52-68.
- \* Butterfield, Fox. (June 12, 2000). Death sentences being overturned in 2 of 3 appeals. *The New York Times*.

OPTIONAL: For the full report of this study, go to

<http://www.law.columbia.edu/instructionalservices/liebman/index>

**20. Th, Nov.30:**

### **The Death Penalty, continued**

\*\*\*\*\* \*'~Famous Trial'' paper due Thursday, Nov.30, before class\*\* \* \* \* \*

**21. Wednesday, Dec. 6,1:30 - 3:18, Final Examination**