

Judicial Politics
Political Science 516
Ohio State University
Winter 2005

Instructor:	Dr. Wendy Watson	Class Meeting:	MW, 8:30 - 10:18
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Course Description:

This course will consider the role of the U.S. courts--state and federal, trial and appellate--as political institutions. The first half of the class will focus on the basics of the judicial process: how the court system is structured, who the actors in the judicial process are, and what it is that courts do (with particular focus on the civil justice system). The second half of the class will focus on how judges make decisions and the effect of those decisions in the U.S. policy process.

This is an upper-division class, and, as such, it will involve a great deal of work. The assignments involve a lot of reading and writing, and I will hold you to high standards in terms of both your reading comprehension and your writing abilities. If you want to learn about the courts and challenge yourself, I think you will find this class quite rewarding. On the other hand, if you are looking for an easy "A" or a way to fill up your schedule you may find this class is not for you. I don't want to discourage anyone from taking this class, but I also don't want anyone to be overwhelmed. Read the syllabus, including all of the assignments, and think long and hard about whether you are willing to take the challenge this class presents; if you are and if you apply yourself, I think you will enjoy significant rewards.

Course Materials:

There are three books required for this class:

Carp, Robert A., Ronald Stidham, and Kenneth L. Manning. 2004. "Judicial Process in America, 6th Edition," CQ Press. (CSM on syllabus)

Bingham, Clara, and Laura Leedy Gansler. 2003. "Class Action: The Story of Lois Jensen and the Landmark Case That Changed Sexual Harassment Law," Anchor Press. (Bingham on syllabus)

Rosenberg, Gerald N. 1993. "The Hollow Hope: Can Courts Bring About Social Change?" University of Chicago Press. (Rosenberg on syllabus)

Other readings will be available on-line or handed out in class. If you have any difficulty accessing these other readings, you should let me know as soon as possible. Do not show up the day the reading is "due" and say you could not find it.

Classroom Etiquette:

I do not mind if you eat or drink during class, but do be quiet about it. Cell phones and pagers must be turned off before class begins. I know it is early, but please do not sleep in class; it is rude.

Assignments and Grading:

There are a total of 1000 points possible for the class, distributed as follows:

Attendance/Minute Papers	250 points
Hollow Hope Discussion/Questions	100 points
Case Study Project	650 points (broken down below)
Case/Briefs	25 points
Analysis Bibliography	25 points
Process Paper Draft	150 points
Analysis Paper Draft	150 points
Final Case Study	300 points

There is no curve in this class. It is thus possible that everyone in the class will receive an A. It is also possible that no one will receive an A. Your grade will be based upon the following fixed scale:

A:	940-1000
A-:	900-939
B+:	870-899
B:	840-869
B-:	800-839
C+:	770-799
C:	740-769
C-:	700-739
D+:	650-699
D:	600-649
E:	anything below 600

I prefer to grade blind. This means that I will ask you to identify yourself on papers and other assignments only by the last five digits of your social security number. When I record the grades for each paper or assignment, I will add your name to the document for purposes of handing it back; however, when I am actually grading your work, I will not know which student belongs to which document. If you have any questions about this process, please let me know.

Papers and Other Written Assignments:

Descriptions of the written assignments are attached to the syllabus. Written assignments are due *in class* on the assigned date. Late papers will not be accepted; if you do not hand me your assignment in class on the due date, you will receive a zero for the assignment. Exceptions will only be made for *documented* medical or family emergencies. “I had another paper due” or “I forgot about the due date” are simply not acceptable excuses. You must let me know about legitimate emergencies ASAP. Call me, e-mail me, send me a singing telegram . . . I don’t care how you let me know your situation, just do it in a timely fashion.

You must provide me with a hard-copy of the paper. I absolutely will not accept computer disks or e-mail attachments. Your paper should be secured with a staple in the upper left-hand corner (do not fold the corner down, use a paper clip, or put the paper in a folder of some sort – use a staple). Title pages are unnecessary and actually discouraged; however, be sure to put the date and your social security number somewhere on the first page (ideally, you should put your social security number on every page, but that is not required).

Attendance and Minute Papers:

Attendance and participation in this course are required. At the end of each class period during the first seven weeks of the quarter, you will complete a “minute paper”; this will be a 3-5 minute written exercise designed to gauge your attention to and comprehension of the course material (lectures, discussion, and reading) and to give you the opportunity to guide class discussion. In each minute paper, you will address two things:

- (1) There are discussion questions at the end of each chapter of CSM. You should keep those questions in mind as you do the reading and as you listen to/participate in class discussion. In your minute paper, you should provide a short (1 paragraph) answer to one of those questions. (I will provide similar discussion questions for the class on the Bingham book.)
- (2) What question or issue would you like to know more about? This could be a point raised by the readings that we did not cover at all, a question that was not answered in class, or something that you thought we should have covered in more detail. A sentence or two posing your question(s) will suffice.

I do not expect in-class writing to yield deathless prose. However, I will grade these papers; I will be looking for evidence you did the reading and that you understood the material (or that you made an effort to do so). For me to evaluate your papers, then, your writing must be legible and you must at least be reasonably clear.

Attendance and minute papers account for 250 points (25%) of your total grade. Each minute paper you complete can earn you a total of 25 points, and there will be 12 opportunities to write such papers, which means you can miss two class periods and still get the full 250 points for attendance and minute papers (assuming you get perfect scores on the minute papers). It also means that, if you have perfect attendance and get perfect scores on the minute papers, you can earn a total of 50 points of “extra credit” to offset points lost on other assignments.

The Hollow Hope

During weeks eight and nine of the quarter, we will be discussing Gerald Rosenberg's book, *The Hollow Hope*, and a review of the *The Hollow Hope* written by Neal Devins. For those two weeks, we will operate as, essentially, two small classes: a Monday discussion group and a Wednesday discussion group. You must sign up to be a Monday person or a Wednesday person in advance. "Monday people" will attend class on February 21 and February 28; "Wednesday people" will attend class on February 23 and March 2.

You must also sign up in advance to be a "discussion leader" during either week eight (civil rights) or week nine (abortion and women's rights). As a discussion leader, you will be responsible for coming up with three discussion questions to guide the group's conversation on *The Hollow Hope*. Look at the discussion questions posed in the CSM book for guidance on what sort of question is appropriate. Discussion questions must be e-mailed to me no later than 8:00 p.m. the night *before* the discussion. Discussion leaders may be called upon to jump start the discussion if it starts to lose momentum, so it is in your best interest to develop provocative questions to keep the discussion moving.

Your discussion questions are worth 50 points (5%) of your final grade, and your participation in class discussion during weeks eight and nine is worth another 50 points (5%) of your final grade. If you have any questions about this assignment, please do not hesitate to ask.

Academic Honesty:

This is an upper level course, and I hope you registered for it because you are interested in learning something. However, I know some of you are taking this course to fulfill a requirement and you hope to pass the class with as little effort as possible. That is your choice. However, I have strong feelings about the issues of plagiarism and cheating. Your work in the course should be your own. I will report all instances of academic dishonesty to the university committee on academic misconduct, and they will handle the matter according to university policy. Penalties can include failing this class and/or expulsion from the university. For further information, please visit <http://www.osu.edu/offices/oa/procedures/1.0.html>.

When you quote a source directly, paraphrase a passage from a source, or draw a central idea from a source, you must give credit to that source. I am less concerned with the exact format of the citation than I am with making sure you provide all appropriate bibliographic information: the author, the name of the article/book, the journal in which the article was published or the publishing house that published the book, the date of publication, and the appropriate page reference. However, I strongly urge you to use an appropriate citation format to insure that all necessary information is provided.

If I discover that you have turned in a paper written in whole or in part by someone else, I will report your conduct to the committee on academic misconduct. If you have any questions about what constitutes plagiarism and the bounds of acceptable conduct, you should simply ask. There is no penalty for asking a question about what you can and cannot do, but there may be dire consequences if you engage in academic dishonesty.

Students with Disabilities:

If you have any condition (physical, cognitive, emotional, etc.) that will make it difficult for you to fulfill the requirements of this class or if, as a result of such condition, you will require some sort of accommodation, please notify me as soon as possible so that we can make the appropriate arrangements. You must contact the university's Office of Disability Services (292-3307) to receive appropriate documentation. All information about your condition will be kept in the strictest confidence. I am happy to accommodate any special needs you have, but you have to let me know what those needs are in advance. Please do not come to me after you have turned in an assignment and ask for an adjustment based on an undisclosed disability, and please do not approach me the day before an assignment is due to tell me about an accommodation you require.

Course Schedule:

Jan. 3 Welcome and Introduction

Part 1: Judicial Process

Jan. 5 Foundations of Law in the U.S. / In-Class Example of Case Brief
Reading: CSM Chapter 1
 Hawkins v. McGee, 146 A. 641 (N.H. 1929) (handed out in class)

Jan. 10 Jurisdiction
Reading: CSM Chapter 2

*** Project Cases Due Today!! ***

Jan. 12 State Courts and State Judges
Reading: CSM Chapter 3 and Chapter 5

Jan. 19 Federal Courts – History and Organization
Reading: CSM Chapter 2

Jan. 24 Federal Judges
Reading: CSM Chapter 6

*** Bibliography for Analysis Due Today!! ***

Jan. 26 Lawyers, Litigants, and Interest Groups
Reading: CSM Chapter 8

Jan. 31 Civil Court Process
Reading: CSM Chapter 11

Feb. 2 Civil Court Process Continued
Reading: Bingham (full book)

*** Draft of Process Portion of Paper Due Today!! ***

Part 2: The Courts as Political Actors

Feb. 7 Decision-Making by Trial Court Judges
Reading: CSM Chapter 12

Feb. 9 Decision-Making by Collegial Courts
Reading: CSM Chapter 13

Feb. 14 Federal Appointments and Public Policy
Reading: CSM Chapter 7

Feb. 16 Effect of Judicial Policies
Reading: CSM Chapter 14

*** Draft of Analysis Portion of Paper Due Today!! ***

Feb. 21 Courts as Policy-Makers: Civil Rights
Feb. 23 Reading: Rosenberg, Chapters 1-5
Devins, Neal, "Judicial Matters," 80 Calif. L. Rev. 1027 (1992)
No Minute Papers

Feb. 28 Courts as Policy-Makers: Abortion and Women's Rights
Mar. 2 Reading: Rosenberg, Chapter 6-9
Devins, supra.
No Minute Papers

Mar. 7 In-Class Film: To Kill a Mockingbird

Mar. 9 Summing Up and Discussion of To Kill a Mockingbird
Reading: CSM Chapter 15
No Minute Paper

*** Final Project Due In Class on March 9!! ***

Case Study Project

Your project for this quarter involves preparing an in-depth study of a single U.S. Supreme Court decision. I have broken this task down into several smaller components for three reasons: (1) it makes the whole project seem more manageable; (2) it forces you to pace yourself rather than waiting until the last week of class to write your paper; and (3) it will allow you to get feedback from me throughout the quarter and thus insure that you are on the right track.

Step 1: Acquire primary sources for your paper.

DUE Jan. 10

The first step in this process is to select a Supreme Court decision that you will write on over the course of the quarter. Because you will be working on this paper over 10 weeks, you should try to choose a case that interests you. I have provided a list of cases to choose from and given you a short description of the substance of each one. Many of you will be working on the same cases; you may discuss the cases themselves to help you better understand them, but your work (including collecting primary and secondary sources) should be your own. If you have any questions about the boundaries for proper and improper collaboration, err on the side of caution and work alone.

On January 10, you need to turn in a packet of documents: the U.S. Supreme Court decision on which you will be writing and the decision the Supreme Court was reviewing (either a U.S. Court of Appeals decision or a decision by a state supreme court). All of these materials are available on Lexis/Nexis or at the OSU Law Library (you can ask for assistance from a reference librarian if you are having difficulty). You will need to print off or copy each of these documents (yes, they are long, but it is important to have hard copies of them), and give them to me on January 10. I will make a note of which case you have chosen to work on and verify that you have collected the appropriate materials. I will hand those materials back to you on January 12.

Completing this assignment is worth 25 points (2.5%) of your final grade in the class; this assignment will not be accepted at all after 9:00 a.m. on January 10.

Step 2: Identify secondary sources for your analysis.

DUE Jan. 24

The next step in completing your project is to identify a list of sources for your case analysis. These should be law reviews, scholarly articles, and/or books (or chapters in books) that address the case you are discussing. The list you turn in on January 24 must provide the full citation for at least eight secondary sources; at least four of these sources must be articles, books or book chapters (as opposed to newspaper or magazine articles). Websites and other internet-only materials are not acceptable; note, however, that you may use the web to locate newspaper, magazine, and journal articles that were originally produced as printed material. If you have any questions at all about what is and is not an appropriate source for this bibliography, ask me in advance.

Completing this assignment is worth 25 points (2.5%) of your final grade in the class; this assignment will not be accepted at all after 9:00 a.m. on January 24.

Step 3: Turn in a draft of the “process portion” of the project.

DUE Feb. 2

The first portion of your paper will follow the format used by law students to “brief” cases in law school. In this portion of the paper, you will trace the procedural path that the case took on its way to the Supreme Court. Your paper should have the following sections:

- (1) **Facts:** What happened to the litigants that led them to seek redress from the courts? Who are the litigants involved? Are they interest groups? Individuals? Corporations? Governments? Think of this as the “story” behind the case.
- (2) **Issues:** What legal issues did the court address? What statutes and/or constitutional provisions did the parties invoke?
- (3) **Procedural History:** Where did the parties first file their claim? What happened after that? Which other courts have been involved, and how did they rule in the case? Have other groups or individuals become involved in the litigation (as intervenors or amici)?
- (4) **Holding:** What did the Supreme Court decide? Which Justice wrote the opinion and who joined him (or her)? Were there any dissents or concurrences? By whom? What did they have to say?

We will go over an example of a brief in class, so you will have a clear idea of what you are supposed to do. The readings and class material on court process should inform this portion of your paper.

On February 2, you will turn in a draft of this portion of your paper. While it is a draft, it should not be rough. You will have the opportunity to rewrite it based on my comments and suggestions, but you should turn in the best work you possibly can at this point. The draft is, itself, worth 150 points (15%) of your final grade. I will be looking primarily at the substance of your paper, but I will also be looking for mechanics and clarity. This portion of your project should be approximately five pages, double-spaced, with one-inch margins.

Step 4: Turn in a draft of the “analysis portion” of the project.

DUE Feb. 16

This is the heart of your project. In this portion of the project you should analyze the Supreme Court’s decision in its political context. The exact approach you take is up to you, but some questions you might want to consider include: (1) How does this decision fit with prior Supreme Court decisions on the same issue? (2) Does the decision reflect or oppose prevailing public opinion on the issue? (3) Does the decision reflect or oppose the position taken by the elected branches on the issue? (4) Does the decision clarify the law or does it make things even more complicated? (5) How might interest groups and the elected branches respond to the decision? While you should use secondary sources in drafting your analysis, you should not simply regurgitate what others have said. Rather, your analysis should reflect independent thought and critical thinking about class materials.

On February 16, you will turn in a draft of this portion of your paper. Again, this should be a reasonably well-developed version of your final paper; you may, however, make occasional notes of issues or points that you plan to develop further in the final version of the paper. The draft should include appropriate citations and should be mechanically competent. At this point, the draft should be approximately seven pages, double-spaced, with one-inch margins. The draft is worth 150 points (15%) of your final grade.

Step 5: Turn in the completed project.

DUE Mar. 9

Your completed project will combine the process and analysis papers you have already written, as revised in light of my comments on your drafts. The format of the final project is relatively straightforward. First, you should have an introductory paragraph (labeled “Introduction”); this paragraph should provide a one-sentence summary of the Supreme Court’s decision and provide a “sneak peek” at your analysis of the decision. The rest of the paper should be organized in the same manner as the drafts with each section labeled appropriately.

The final project should be well-organized, well-reasoned, and well-written (using proper grammar, spelling, diction, etc.). I will have copies of your drafts, so I will know how much effort you have put into revision. This paper should be something you could use as a writing sample for a law school or graduate school application. Indeed, it is my hope that I will be able to nominate one or more of your final papers for the political science department’s undergraduate paper award. The final project is worth 300 points (30%) of your final grade. The final paper should be approximately 15 pages in length (excluding the bibliography or reference list).

Cases:

American Insurance Association v. Garamendi, 539 U.S. 396 (2003). (California’s Holocaust Victim Insurance Relief Act of 1999 and executive control over foreign affairs)

Ewing v. California, 538 U.S. 11 (2003). (California’s “three strikes law” and the Eighth Amendment)

Gratz v. Bollinger, 539 U.S. 244 (2003). (University of Michigan’s affirmative action program and equal protection clause)

Lawrence v. Texas, 539 U.S. 558 (2003). (Texas anti-sodomy law and the right to privacy)

Nevada Department of Human Resources v. Hibbs, 538 U.S. 721 (2003). (Family and Medical Leave Act and the Eleventh Amendment)

Smith v. Doe, 538 U.S. 84 (2003). (Alaska sex offender registration and ex post facto clause)

United States v. American Library Association, Inc., 539 U.S. 194 (2003). (Children’s Internet Protection Act and the First Amendment)