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1-23

Good Morning. This is your captain speaking.

This is a non-stop flight of one semester, welcome aboard

HOWEVER

BEFORE ENTERING THE CLASSROOM you must *TURN OFF* and store in your backpacks, brief cases or purses, and place under the desk any/all netbook, notebook or laptop computers, cell phones (especially blackberry like things), pagers, PDAs, walkie-talkies, cd, DVD or cassette players, iPods (or other mp3 devices), head/ear buds/phones, or Oakley sunglasses.

Skateboards, bikes, roller-blades, scooters or sports equipment (baseball bats, hockey or lacrosse sticks, golf clubs, soccer, rugby, basket, base- or other balls) *may not be brought into the classroom...these constitute an exit/movement hazard. Leave all of these things outside the class room.*

We can now take off.

Please Enjoy the flight.

Good Afternoon. This course is an examination of the American judicial and legal system. This means that we are not going to restrict our study to judges only, what they do and why. That's part of it, indeed the most visible part, but not the most important part. We are going to explore the origin, structure, operation and motivation of the American court systems. What must be firmly understood is that the courts and the judges are the products of the public and private philosophy, of the United States and merely reflect the preferences of those philosophies. To be sure the courts affect their environment and over the last 55 years or so have been seen as a primary agent of social change; they are also affected by their environment. Change the assumptions underlying the operation of the courts and you will get a very different result. This is the reason for the differences between state court systems.

The philosophy I alluded to above is based on a more fundamental assumption, the misunderstanding of which leads to great difficulty. The courts, federal or state, criminal or civil, trial or appellate, constitutional or special, are first and most importantly political institutions designed and intended to provide an outlet for political pressure; see, for example the last quarter of a century. Those who believe that, in the American system, the courts are intended to be a venue for justice are simply wrong. Justice is the result of the operation of the laws, designed by the legislature, and argued by others (usually lawyers) in the forum of the courts. The achievement of justice is a secondary, and marginal, objective of the American court systems. We will deal with this problem and its different manifestations during this semester. The problems, and how those problems are being worked out, have become especially critical in the last five years. I will use individuals and incidents as examples from this period throughout the class.

We will also discuss how judges are selected and trained, lawyers, clients of the court, the police and the like. If this is to your taste welcome; if not there are other courses from which to choose.

The format of the class is lecture, but I prefer to think of it as a structured conversation. By that I mean I expect and encourage your participation, comments, and questions but within the framework of the structure of the course. To do this you must do the reading, follow the arguments of either myself or others. You must be prepared to do some hard work, and to think. If this is not to your taste, again there are other courses available in the schedule.

Your understanding will be determined in 3 ways: a research paper; a review of the class materials; and a take home final exam that is comprehensive and commutative over the readings, lectures and research paper (see Memo attached.) Each is due on the dates below. If you have questions, now is the time to ask.

Important dates:

August 27th, 2009: We start
September 8th Research Paper Topic due.
October 15th: Research Paper due
November 12th : Review of Readings due
November 23rd : Final available
December 10th : Final Due

All assignments are being made today (see Memo 08-25-09, attached). Assignments must be typed, with your name on them, paginated, and stapled (do not use those plastic folders!!!) and in my office, my mail box or my hand not later than 3:00 PM of the date due. I do not accept late papers, for any reason, nor do I award incompletes except in extraordinary circumstances. Ordinarily "extraordinary circumstances" mean serious health or family problems. ***If there is a problem let me know in advance. In advance many things are possible; afterward nothing is.***

Your work must be responsive to the assignment. That is to say it must address the letter, spirit and intent of the assignment. If the effort does not do so the evaluation will be adversely affected.

All assignments must be in proper formal English, and conform to all academic expectations with respect to form, content and documentation. To that end, I have order a style manual for your reference. Assignments must be documented by references to the "professional" literature, i.e. academic journals and books, and of course, the class material. Assignment 2 must be documented by appropriate references to the assigned material only.

You may **NOT** use **ANY** popular source including any newspaper, magazine, or encyclopedia (*especially Wikipedia*¹) or the internet. However, you may use the University web page to link to other libraries, library holdings and electronic journals, and legal sites such as www.findlaw.com, or www.yale/lawweb.edu/avalon. You are explicitly encouraged to use governmental web sites. I will show you on Thursday, the 27th.

As much as I don't like raising this issue, academic dishonesty will not be tolerated. Representing someone else's work as yours either by not citing another's words or ideas, having someone else do the work, verbatim quotation without proper punctuation, unattributed paraphrase, or presenting papers available from the ads in the back of the Rolling Stone, or ones down loaded from the 'Net, and the like constitute plagiarism,. The legal term for this is "fraud." The penalty for this is an F in the course and reference to the proper university disciplinary process. Please don't do this. If you are unclear as to what constitutes academic dishonesty, ask me now. www.plagerism.org or www.turnitin.com is a resource to check this. I can also "google" the work. I will go through this on Thursday the 27th.

Similarly I expect from everyone professionally courteous polite and respectful behavior. In any conversational class, commentary can provoke all sorts of reactions, including arguments. Just take it in stride. This is "not personal. It's strictly business".---Michael Corelone.

If you have a disability that might be a barrier to getting thru this material, or to the class, let me know; we'll work it out.

Grades are on a 40 point scale: 40-35 is an A; 34-25 is a B; 24-15 is a C; 14-5 a D; and less than 5 an F. Each assignment is worth 1/3 rd of your grade. For those at the margin of a grade, I will take into account class participation (I want it) attendance, and overall quality, as well as consistency of quality, of assignments. I award plus and minuses.

¹ On Wikipedia see, e.g. Seeing Corporate Fingerprints in Wikipedia Edits, New York Times, August 19th, 2007 http://www.nytimes.com/2007/08/19/technology/19wikipedia.html?_r=1&oref=slogin

O.K., Questions?.....Let's hear 'em.....complaints??.....we might as well deal with this now.....ahem, praise???.....oh, well it's probably too early for that, if at all.

I am asking that you read the following:

Abraham, *The Judicial Process*, 7th ed.
Banks & O'Brien, *Courts and Judicial Policy Making*
Slotnick, *Judicial Politics: Readings from Judicature*.
Harr, *A Civil Action*
Scott & Garrison, *The Political Science Student Writer's*

We will proceed according to the following outline. Assignments are listed below by topic. The assignments from Slotnick are by the beginning page numbers of the readings; all others are by either chapter. The following abbreviations are used.

Banks and O'Brien is B&O; Abraham A; S; Slotnick, SK. Harr should be read as a whole. It's "fun" exciting, and was made into a very popular movie with John Travolta (no the movie will not substitute.)

Questions?.....O.K.

I have also listed some additional, Suggested, works. These are intended to be helpful, for those of you who wish to read a bit more.

The Purpose of A Political Court:

A, pp 54-91, **SK 1-46, 166 thru 208, 264 thru 301, 634 thru 670**

Suggested

Dolebare, K. Trial Courts in Urban Politics

Madison, J. Hamilton, A. and Jay, J. The Federalist Papers, # 78

D'Tocqueville, A. Democracy in America, translated by George Lawrence

"The temper of the American legal profession and how it serves to counterbalance democracy" pp 263-270

Bickel, A. The Least Dangerous Branch

The Law

A chpt 1; B&O, chpt 1, 2

Structure of the Courts

A, 101-111, **SK 579 thru 609.**

B&O, chpt 3, 6

Suggested,

Stumpf, H.P. & Culver, J. H. The Politics of State Courts. Chapter 2

Trial Courts

SK 302 thru 335 . B&O, chpt 7, pp 186-198

Appellate

A, 156-183; **SK 336 thru 401**, 7-425.

Levi, L. An Introduction to Legal Reasoning

Roosevelt, K. The Myth of Judicial Activism

Stumpf H.P. and Culver, J.H. The Politics of State Courts Chapter 7

Administrative Considerations

A 146-151; B&O, pp 99-105, **SK 121 thru 144, 336 thru 401, 610 thru 633**

Stupmf, H. P. and Culver, J. H. The Politics of State Courts Chapter 5 & 6

The Law as Policy

A, 351-371; **SK, 166 thru 208, 634 thru 670,**

Classics

Casper, J. "the Supreme court and national policy making," 70 American Political Science Review March, pp 50-63

Effect of Courts Actions

A, 552-590 (again); B&O Chpt 8, 10 Harr, all.

Suggested

Eisenberg, T., et. Al, "Juries, Judges, and Punitive Damages: Empirical Analyses Using the Civil Justice Survey of State Courts 1992, 1996, and 2001 Data" 3 Journal of Empirical Legal Studies, (July) pp 263-295.

Participants

Judges: Background & Selection

A, 54-101; **SK 47 thru 144, 513 thru 578** B&O, chpt 4

Suggested,

Goldman, S., Picking Federal Judges: Lower Court Selection from Roosevelt through Reagan.

Stumpf, H.P. and Culver, J.H. Politics of State Courts. Chapter 3

Judges: Role and Values

SK 425 thru 459

B&O chpt 9

Suggested

Segal, J.A. & Spaeth, H.J., The Supreme Court and the Attitudinal Model Revisited

Gibson, J.L., "Judges Role Orientations, Attitudes and Decisions..." 72 American Political Science Review September, pp 911-924.

Judges: Groups

A, 254-270; SK 140-170, 426-476.

Lawyers

SK 145 thru 165. B&O 5

Stumpf H.P., and Culver, J. H. The Politics of State Courts, Chapter 4.

Juries

A, 109-146; **SK 209 thru 263.**

Suggested

D'Tocqueville, A. Democracy in America, Book 2, chpt 8, "The jury in America considered a political institution"

Kalvin, H, and Zeisel, H. The American Jury

Levine, J. Juries and Politics

MEMORANDUM
DATE: 08-27-09
TO: PSc 332
FR: Eubank
RE: Assignments

I
Research paper

Select either (a) three states from among the 50 states of the union, or three nations and compare the judicial/legal systems in each to that of the United States (This must included the federal nature of the U.S. system) or;

(b) choose three different offices in the judicial system, e.g. prosecutor, private attorney, public defender, and comparatively discuss the origin development, behavior, and relatedness of each to the other.

Your choice must be approved by me, and submitted in writing not later than Sept 8th, 2009. It is due October 15th, 2009.

II
Review of Readings

You are to review, in essay form, the reading material for the class. That is to say you must read all of the assigned readings and in an essay organize it into a comprehensive form interpreting and evaluating the readings. You must in this review identify the major themes, contradictions and similarities, conclusions, findings, and the like among the assigned readings. You are not restricted to this and are encouraged to use the professional literature, the journals, to expand points that you find interesting, augment the readings and the like. I am aware that few of you have tried to do this so I have examples of A work in the office and can supply you with a list of published essays.

Due Tuesday, November 13th, 2009.

III
Cumulative, Comprehensive Final Exam

Topic to be announced in writing during the class of November 23rd, 2009.
This is due December 10th, 2009.

All efforts must be typed, double spaced, copiously documented by references to the "scholarly" or "learned" literature and assigned materials and conform to all academic expectations. Assignments are due not later than 3:00 PM of the appropriate date. You are limited to 50 pages of text, not counting space for references, notes and the like.