Dr. Alan Sager Judicial Process and Behavior
Gov 357L Spring 2012 Unique # 38717

Course Description and Other Information

Office Hours and Grading
This semester Dr. Sager does not have T.A. He will be grading all the papers and exams. Office hours will be 2:45- 4:00, before class, on Mondays and Wednesday, usually at the Student Union near Wendy's. He can also be available in his office at Mezes Hall 2.232. Also there will be Wednesday office hours after class, 5:30- 6:30, at the Cactus Cafe(In case Cafe is unavailable office hours we will move across the street to Austin's Pizza).

Course Website: http://drsager.webhost.utexas.edu/judicialpro/home.html

Overview
This course focuses on understanding and explaining judicial behavior. In order to do this, this course examines not only what judges do, but also all aspects of the judicial process such as juries, attorneys, prosecutors, judicial selection, plea bargaining, court structures and the social and political settings in which courts operate.
Most of the assignments involve reading and analyzing judicial opinions in actual cases. These opinions not only reveal what the judge is thinking and how judges think and reason, but also explain how the judicial process works. Some assignments include viewing videos. We will also study some of the quantitative analyses of judicial behavior.
The cases are drawn from a variety both "public' and "private" law areas. Case topics include international law, negligence and product liability law, criminal law and procedure, the interpretation of federal statutes, and constitutional law Some cases used in this course come from the most recent terms of the U.S. Supreme Court. Several of the cases we will cover have been the subject of major movies or discussed in movies and popular T.V. series.
This course is designed for students who want a general understanding of the legal and judicial process as well as those who are thinking about attending law school or are planning to attend law school.

Course Goals
A. Increase Students Understanding of:
1. The operation of the U.S. civil and criminal justice system

2. How judges go about making decisions and writing opinions as well as how we think judges should go about this task, e.g. both normative and empirical approaches to judicial behavior.

3. Some of the legal and constitutional doctrines that affect or frame the operation the civil and criminal justice system.

B. Expand Students' Ability:
1. To understand, comprehend and critique textual materials

2. To think logically, analytically and creatively(out side the box)

3. To draw useful information from empirical data about judicial behavior

4. To create cogent arguments on two or more sides of the issues we cover. (see discussion of tensions and crosscutting purposes below)

5. To use words more precisely (e.g. Holocaust, murder, law,)

C. Do A and B above in a challenging and interesting environment

We will find many tensions and cross cutting purposes in the institutional structures on which the judicial process is built. We will analyze the "who", "how" and "why" of their resolution. Here are some examples

1. Judges
A. Making the law versus interepting the law
B. Policy makers versus disinterested weighers
C. Justice vs. Law
2. Adversary system
A. Fight theory vs. truth theory
B. Lawyers responsiblity to client vs responsbility to society
3. Juries
A. Public participation by "competent" citizens versus alleged "lemmings and day time T.V. viewers"
B. "Fair" versus "efficient" juries
4. Prosecutors
A. Protecting the public welfare versus protecting their personal position
B. Justice v. law
5.Types of Punishment

We will also be constantly searching for the unspoken or assumed premises of judges, posecutors, juries, etc., and even ourselves as we study these materials.
Bringing such premises to light will sharpen and enhance your analytical skills and ability to create distinctions. Seeing and creating distinctions are the building blocks of learning and most efficient way to expand what you see in the world.

What is required of students in the course:
A. Keep up with reading and briefing for each class

B. Know the cases before coming to class

C. A willingness to be an active participant in the class

D. A willingness to go beyond any self imposed academic limits.

Course Requirements
1. 3 hours exams approximately 65%(40% objective,60% essay)
2. 2 papers 3-4 pages approximately 20%
3. Class attendance and participation approximately 15%

How Can Students Make This Course Easier?
Spend all the time ncessary in the first few weeks to do good to excellent briefs and put together a study group. Students have found that study groups of from 4 to 8 classmates are extremely helpful in mastering this course. Forming one is strongly encouraged and could viewed as a necessity. These groups will help your daily preparation and preparation for exams.

Prizes
It is my custom to award prizes for the best paper for each assignment, the best score on each exam and the highest average for the semester. For the highest individual exam scores the prize is a U.S. Supreme Court coffee mug. For the highest average , the prize is an engraved plaque with a gavel and the Supreme Court seal and a signed copy d of Clarence Thomas's autobiography, My Grandfather's Son acknowledging this winner. There are also other prizes, e.g., for most improvement from one exam to another.

SUGGESTION Students have found that study groups of from 4 to 8 classmates are extremely helpful in mastering this course. Forming one is strong encourage and could viewed as a necessity. These groups will help your daily preparation and preparation for exams.

Note: Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities, 471-6259, http://www.utexas.edu/diversity/ddce/ssd/ Please let me know what accommodations are needed as early in the semester as possible

Dr. Sager can be reached by email: amsag@mail.utexas.edu and by calling his business office: 512-476-3891 ext 756. Best not to leave a phone message in his Mezes office. If there is any problem with the U.T. email address, an alternate is class@alansager.com

Required Books:

1. **Courts, Judges and Politics: An Introduction to the Judicial Process**, Walter Murphy, C. Herman Pritchett, Lee Epstein and Jack Knight, 6th Edition, 2006 or later.

2 **Judicial Process and Behavior Case Packet** available at Co-op

3.Anthony D'Amato **An Introduction To Law and Legal Thinking** This book is out of print. Students have always thought it was a great read. Thanks to Professor D'Amato, who has been a friend for 40 years, I can make relevant chapters available in class.

4. Clarence Thomas, **My Grandfather's Son**, paperback, 2008.

Course Assignments

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All cases assigned should be briefed. If a case is not linked to the web, it appears in the course packet available at the Coop. The Course Info page contains a link to instructions on briefing a case. Briefs need to be written and brought to class unless you can commit your brief to memory in a way that you can answers questions about it. General reading assignments should be summarized in writing and also brought to class. Usually, for the assignments in Courts, Judges and Politics, called CJP on this Assignments page, three or four sentences summarizing the main points will be sufficient. For the D'Amato chapters, handed out in class, they may take 1/2 page or more. Pay particular attention to the way D'Amato uses hypothetical fact situations to illustrate his points. He is a master at this kind of argument which is the fundamental to the understanding of how judges and lawyers think and behave.

NOTE: As we move through the semester, assignments are subject to change. Check this page on a regular basis.

There is a videopage for this course which will be kept updated, mainly with relevant videos from Youtube.(click here)

Class 1: Wednesday January 18

Introduction

How should judges behave?

To begin thinking about judges and judging we will begin with a well know Supreme Court case, Republican Party of Minnesota v. White. Brief this case by going to the full Supreme Court opinion:

Republican Party of Minnesota v. White(Online findlaw)(click here for a Dr. Sager's very brief brief of this case)(you can find
more about the case and judges who decided it by going to the Oyez Oyez website on our resources page and search for the case by name. Also you can find on Oyez the oral argument in downloadable mp3 format and a transcript of the oral argument.
Most oral arguments are exactly an hour long and they provide great insights you may not get from reading an opinion)

On the surface this is a case about free speech during a judicial election. But this is not a course in civil liberties. So you need to look below the surface to see how this case applies to this

course. Study this case very carefully. What theories about how judges do and should behave are propounded or hidden in the various opinions? Do these theories apply only to judges or to all political actors or all people? How would you have decided this case and why? What is the political significance of this case? What current political issues does this case speak to? What parts of this course does this case speak to?(look at the various topics in the syllabus to get a handle on this question)

Begin reading Clarence Thomas, My Grandfather's Son We will begin using it for discussion in our fourth class

For the first two classes read and summarize the following:
One L:An Inside Account of Life in the First Year of Harvard Law School CJP Reading 5.1 pp 221-228(CJP refers to the assigned book, Courts, Judges and Politics by Murphy, Pritchett, Epstein and Knight. Note if you have a different edition the page numbers may vary from what is assigned. Go by the title of the article in that case)
Oliver Wendell Holmes, Jr. The Path of the Law, CJP Reading 1.4, pp 27-30
Benjamin N. Cardozo The Nature of the Judicial Process CJP Reading 1.5 pp 30-33

Class 2: Monday January 23

How Should Judges Behave II

Caperton v. Massey (Online Findlaw)

On the surface this is a case about due process of law and whether a judge should recuse himself or herself as a result of
campaign contribution by parties in case on which he or she is sitting. But under the surface, as in the Republican Party v.
White case, there are theories about judicial behavior and the role of Courts in defining and regulating it.

Band Refuse Removal v. Village Fair Lawn

Class 3: Wednesday January 25

The Selection of Judges: State and Federal I

CJP Chapter 4 pp 141-159

Read David Beckwith's lead article in Time Magazine in 1987 about Robert Bork. As you may know Bork was not confirmed. His defeat gave rise to the term
"Borking" in the Senate. Full article:
http://www.time.com/time/magazine/article/0,9171,965540,00.html
Front Cover of that issue of Time http://www.time.com/time/covers/0,16641,19870921,00.html .
Publisher's letter about the article:
http://www.time.com/time/magazine/article/0,9171,965538,00.htmlCan Politicians and the Public Predict Judicial Behavior?

Should A Judge's Future Behavior Matter?

Justice for Sale and TMA Videos in class

Class 4: Monday January
The Selection of Judges: State and Federal II

Read Commentary articles on Bork and Thomas nominations and the letters about those articles.

Paper #1 Assignment Click Here Due February 15th

Tables 7, 8 and 15

Class 5, Wednesday February 1

What Do Courts Do?

Queen v. Dudley and Stephens

Sherrod v. Berry

Craig v. Boren(Online Findlaw)

CJP reading 8.2, Epstein and Walker, The Choices Justices Make (essential reading to go with Craig v. Boren)

Read D'Amato, Chapter 1, 2

Table 6. From Grievance to Court Filing

Figure 1. Traditional Model of Legal Reasoning

The Selection of Judges: State and Federal II

Read Commentary articles on Bork and Thomas nominations and the letters about those articles.

Paper #1 Assignment Click Here Due February 15th

Class 6: Monday February 6

The Traditional Model of the Judicial Process I: Examples from the law of Torts

Winterbottom v. Wright

Thomas v. Winchester

Loop v. Litchfield

Aldisert on Judicial Reasoning

D'Amato Chapter 4

CPJ Chapter 10 pp. 438-449

Products Liability Glossary (Begin reviewing these terms and make sure you understand them all by the end of class 5. Ask questions about those you do not understand).

Class 7: Wednesday February 8

The Traditional Model of the Judicial Process II: Examples from the law of Torts

Losee v. Clute

Devlin v. Smith

Torgeson v. Schultz

Figure 3. Deductive Model of Judicial Decision making(E.R.)

CPJ readings 10.2, 10.6, 10.7

Class 8 Monday February 13

The Traditional Model of the Judicial Process IV: Examples from the law of Torts

Escola v. Coca Cola

Greenman v. Yuba Power

Sindell v. Abbott Labs

CJP Reading 13.1 Charles Nesson, Critical Issues in the Courtroom: Exploring a Hypothetical case

Class 9 Wednesday February 15

The Traditional Model of the Judicial Process IV: Examples from the law of Contracts I

Oscar Schlegel v. Peter Cooper's Glue(2 cases)

Williams v. Walker Furniture Company(2 cases)

Tables 10 and 11.

Class 10 Monday February 20

Exam #1 In Class

Exam Info Click Here

Class 11 Wednesday February 22

The Traditional Model of the Judicial Process V: Examples from the law of Contracts II

Hawkins v. McGee

Peevyhouse v. Garland Coal Company

Haslip v. Pacific Mutual Insurance Company

D'Amato Chapter 4

Class 12 Monday February 27

How the Judicial Process Works I: Choice of Forum and Pleadings

Justice Brandeis in Ashwander v. T.V.A.

Swift v. Tyson(Findlaw)

Erie Railroad v. Tompkins(Findlaw)

Figure 2.

CJP Chapter 8 329-344

Class 13 Wednesday February 29

How The Judicial Process Works II: Trials, Pre-Trials, Juries

State v. Susan Nelson
Ballew v. Georgia(Findlaw)

J.E.B. v. T.B.(Findlaw)

Tables 2 and 3.

CJP Readings 9.1, 9.2, 9.5, 9.6,

Class 14 Monday March 5

How the Judicial Process Works III Lawyers, Evidence and Strategy
Nix v. Whiteside
U.S. v. Kasto
In Re Winship

Class 15: Wednesday March 7

How the Judicial Process Works IV: "Scientific Evidence"

McCleskey v. Kemp

Daubert v. Merrill Dow

Junk science of John Edwards

Table 4.

CJP Readings 9.7, 9.10, 9.11

Class 16 Monday March 19

How the Judicial Process Works V: Judicial Discretion and Control

Wyatt v. Stickney

Heilmann v. Joseph Oat

Chart of Judicial Policymaking

CJP Chapter 7 299-309,

CJP Chapter 8 pp 329-344

Class 17 Wednesday March 21

How the Judicial Process Works VI: Doing Justice and Judging the Judges

People v. Alstoetter

Linder materials on Nuremberg Trials(click here) This contains a copy of Alstoetter case as well as excellent commentary on the issues. He also has some pictures from the tiral.

Fedorenko v. U.S

D'Amato Chapter 7.

Video: Judgment at Nuremberg excepts shown in class(This is a docudrama that includes the Alstoetter case though it is called something different in the film)

(Exam #2 will cover everything from Schlegel through the inclass video.)

Class 18 Monday March 26

Exam #2 In Class

Will Be Held in Calhoon 100

Class 19 Wednesday March 28

How the Judicial Process Works VI: Doing Justice and Judging the Judges

Continuing with Alstoetter and Fedorenko

Judicial Behavior and the Common Law

Palsgraph v. Long Island R.R.

Hynes v. New York Central Railroad

Reread CJP 1.4, 1.5 Read CJP 1.1, 3.7, 5.2

Class 20 Monday April 2

Judicial Behavior and Natural Law

Sodero v. Sodero

Riggs v. Palmer

CJP Chapter 1, pp 3-22

Paper #2 Assignment In Class(click here for discussion of Guttman scaling)

Class 21 Wednesday April 4

Judicial Behavior and Statutory Interpretation: I

T.V.A. v. Hill

D'Amato Chapter 3

Graph 1

CJP Chapter 11 491-501

CJP Reading 13.6

Class 22 Monday April 9

Judicial Behavior and Statutory Interpretation II

U.S. Steel Workers v. Weber
Swann v. Charlotte Mecklenburg
Manhart v. City of Los Angeles

CJP Readings 11.1, 11.7, 11.8

Class 23 Wednesday April 11
Judicial Behavior and Statutory Interpretation
PGA v. Martin
U.S. v. Locke

Class 24 Monday April 16

Judicial Behavior and the Constitution: Procedural and Substantive Due Process

Goldberg v. Kelly, Wheeler v. Montgomery

DeShaney v. Winnebago County

Table 9

CJP Chapter 12 pp 539-558

Class 25: Wednesday April 18

Judicial Behavior and the Constitution: Criminal Justice

Coker v. Ga.

U.S. v. Leon and Sheppard v. Mass.

CJP Readings 12.2, 12.3, 12.4

Chapter 14 691-703

Paper #2 Due Today

Class 26 Monday April 23

Judicial Behavior and the Constitution: The Role of Precedent

Planned Parenthood v. Casey (For a brief diagram of Casey opinions click here)

Payne v. Tennessee

Have Texas Courts Really Changed? Click Here

CJP Readings 12.7,10.6, 10.7

CJP Readings 14.1, 14.5, 14.6

Class 27 Wednesday April 25

Putting It All Together

The case of the Speluncean Explorers. Original Lon Fuller article(click here) D'Amato additional opinions(click here) Some study questions after reading the opinions(click here)

CJP Chapter 13, 617-644

Class 28: Monday April 30

Summary and Review

Class 29 Wednesday May 2

Hour Exam #3 In Class