**Seminar:**

**Special Topics in Law and Politics**

**POLI3303-01 (Fall 2023)**

Professor Ken I. Kersch

In this class, we will enlist a diverse set of readings on ground-level actors in legal institutions to consider how politics enters into and is implicated in law and the juridical field. While our consideration will be open and flexible, we will look through four lenses at who these people are, what they do, how they do it, and why: 1) formal/professional/office-official duties; 2) political responsibilities and realities; 3) ethical and moral obligations; and 4) personal desires, ambitions, and goals. In our explorations, we will frequently -- albeit not exclusively -- use Max Weber’s writings on authority, Pierre Bourdieu’s writings on the sociology of the juridical field, and Martin Shapiro’s writings on political jurisprudence as theoretical touchstones and tools.

**Office Hours:**

Class Meetings/Attendance: This class will meet once a week, on Thursdays, 1:30-4:00 PM. Except in cases of illness or other important life issue, students are expected to attend all classes. The class will likely include some short lectures. But, as a seminar, it is mostly conducted via discussion and student presentations. I expect students to do all assigned readings (or watch the assigned films or videos) prior to class, and to be ready to discuss them and the questions they raise. I reserve the right to call on any student in class at any time.

There will be no audio or video recordings of our class meetings. If students must miss a class or classes for an excused absence, they are expected to get the notes from a fellow student. I am happy to meet with students during office hours to discuss the content of the class they may have missed.

**Restrictions on Computers in Class:** All phones must be turned off and stored during class. To minimize distractions, students are prohibited from using any type of computer (this means laptops, notebooks, smartphones, etc.) ***for any purpose other than bringing up assigned materials on the screen***. Students may not browse the internet, engage in social media, chat, or use their computer for any other purpose than accessing course texts and videos. These restrictions, and this rule, are mandatory.

Exceptions will be made in individual cases for legitimate, dean-approved reasons, including disability (information below) cleared through the Dean’s or the disability office.

**Canvas:** We will make extensive use of the course Canvas page and of library reserves. Any assigned reading that is not in a required-for-purchase book is posted in the Modules section of the course Canvas page or on reserve in O’Neill Library.

While we may use Canvas for some exercises and for the submission of papers, you should disregard any number grades that Canvas assigns to the letter grades I give. Grades are given, and kept separately, off Canvas on a private Excel sheet.

**Academic Integrity**: Academic integrity is violated by any dishonest act committed in an academic context, including but not limited to cheating, plagiarism (attempting to pass off the work of others or computer-generated artificial intelligence as your own, in any way in any part of an assignment), and submitting for credit in this class work done for another class. All suspected violations will be reported to the Dean in accordance with University policy.  A final grade of “F” for the course will be given in the event of a violation of academic integrity. Additional penalties may apply.

The University’s policy on Academic Integrity is available here:

<https://www.bc.edu/bc-web/academics/sites/university-catalog/policies-procedures.html#tab-academic_integrity_policies>

**Disability Accommodations**: If you are a student with a documented disability seeking reasonable accommodations in this course, please contact the Connors Family Learning Center regarding learning disabilities and ADHD. For other students with medical, physical, psychological, and temporary disabilities should register with the Disability Services Office.

**ESL Assistance**: **Boston College welcomes students** from around the world and recognizes the unique perspectives international students bring enrich the campus community. To empower students whose first language is not English, Boston Colleges makes ESL specific resources available on campus, including ESL writing support and conversation appointments through the Connors Family Learning Center.

**Course Requirements:**

1) Two (2) short in-class presentations/discussion, supplemented by short response papers (2-3 pages) on a starred (\*) reading or film (30%)

2) One final paper (6-8 pages) (30%)

3) Attendance/Attention/Preparation/Participation (40%)

***Texts***:

Peter Irons, *The New Deal Lawyers* (Princeton, 1982).

Paul Butler, *Let’s Get Free: A Hip-Hop Theory of Justice* (New Press, 2009).

Robert Cover, *Justice Accused: Antislavery and the Legal Process* (Yale, 1975).

Kenneth Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Harvard, 2012).

Ann Southworth, *Lawyers of the Right: Professionalizing the Conservative Coalition* (Chicago, 2008).

Steve Teles, *The Rise of the Conservative Legal Movement*: The Battle for Control of the Law (Princeton, 2008).

Benjamin Cardozo, *The Nature of the Judicial Process* (Yale, 1921).

Amanda Hollis-Brusky and Joshua Wilson, *Separate but Faithful: The Christian Right's Radical Struggle to Transform Law & Legal Culture* (Oxford, 2020).

D. Graham Burnett, *A Trial By Jury* (Vintage, 2001).

Additional Materials posted on the course Canvas Site. Videos/films and assigned books not required for purchase have been placed on course reserves and are available via O’Neill Library.

**Readings:**

This is a small group discussion seminar. As such, each class meeting is heavily dependent on student preparation, attentiveness, and participation. Students are required to do all of the assigned readings in advance of each class meeting, and come to class ready to summarize, critically assess, and otherwise examine, question, and discuss those assigned readings.

**WEEK ONE**

**The Real World and Legal Reality**

Mark Bowden, “The Incident at Alpha Tau Omega” (*The Philadelphia Inquirer*, September 1983).

Mark Bowden, “Why don’t u tell me wht ur into” (*Vanity Fair*, December 2009).

**WEEK TWO**

Pierre Bourdieu, “The Force of Law: Toward a Sociology of the Juridical Field,” *Hastings Law Journal* (July 1987) (Not due for this week. Please read sometime during the first six weeks of the course).

**Litigants**

Peter Irons, *The Courage of Their Convictions*

Ch. 1 – We Live by Symbols [on William and Lillian Gobitis]

 *Minorsville v. Gobitis* (1940); *West Virginia v. Barnette* (1943)

Ch. 2 – Am I an American? [on Gordon Hirabayahi]

 *Hirabayashi v. United States* (1943)

Ch. 12 – The Poor People Have Lost Again [on Demetrio Rodriguez]

 *Rodriguez v. San Antonio School District* (1973)

Ch. 16 – I Saw a Bedroom Door Partially Open [on Michael Bowers]

 *Bowers v. Hardwick* (1986); *Lawrence v. Texas* (2003)

**WEEK THREE**

**Courts as Institutions**

\*Max Weber, “The Nature of Charismatic Authority and its Routinization,” “Bureaucracy,” “Formal and Substantive Rationalization in the Law – Sacred Laws,” “Modern Law”

\*Martin Shapiro, *Courts: A Comparative and Political Analysis*, Ch. 1.

\*Hannah Arendt, *Eichmann in Jerusalem,* Ch. 1, “The House of Justice”

**WEEK FOUR**

**Lawyers**

**Becoming a Lawyer**

\*Film: *The Paper Chase* (1973) (d. James Bridges)(book by John Jay Osborn, Jr.)

D.W. Randolph, *Big Law Confidential*, Ch. 1, “What is ‘Big Law’?; Ch. 3, “The Good, the Bad, and the Ugly”; Ch. 4, “Performance Expectations and the Performance Evaluation Process”; Ch. 5 excerpt: “Understand that Big Law Firms Don’t Tolerate Excuses”; Ch. 8 excerpt (recruiting/hiring committees consider); Ch. 13 excerpt (“Two/Five/Ten Years out of Law School”)

Marc Galanter, *Lowering the Bar: Lawyer Jokes and Legal Culture* (Wisconsin, 2005), Ch. 1, “The Lawyer as Economic Predator”; Ch. 4, “Conflict: Lawyers as Fomenters of Strife”; Ch. 7, “The Lawyer as Morally Deficient”; Ch. 10, “Enemies of Justice”

**WEEK FIVE**

**The Government Lawyer**

**\***Peter Irons, *The New Deal Lawyers* (Princeton, 1982): Preface; Introduction; Section One (Chs. 1-5); Section Three (Chs. 10-13); Conclusion

Nolette, Paul. 2017. “The Dual Role of State Attorneys General in American Federalism:
Conflict and Cooperation in an Era of Partisan Polarization,” *Publius: The Journal of
Federalism* 47(3): 342-377.

\*Paul Butler, *Let’s Get Free: A Hip-Hop Theory of Justice* (New Press, 2009)

**WEEK SIX**

**Guest Lecture: James Sasso (BC Political Science ’12) – Senior Investigative Counsel, U.S. House of Representatives January 6 Committee/Williams and Connelly (Washington, DC)**

**WEEK SEVEN**

**Lawyer for the Defense**

\*Film: *Intruder in the Dust* (1949) (d. Clarence Brown) (book by William Faulkner)

Hannah Arendt, *Eichmann in Jerusulem*, Ch. 2, “The Accused”

**WEEK EIGHT**

Clarence Darrow, on the Leopold- Loeb Trial

Robert Ferguson, “John Brown: Defendant on the Loose”;

Robert Ferguson, “Traitors in Name Only: The Haymarket Defendants”

Robert Ferguson, “Killing the Rosenbergs”

**WEEK NINE**

**Legal Guilt and Moral Responsibility**

\*Robert Cover, *Justice Accused: Antislavery and the Legal Process,* Ch. 3: Judicial Construction of a Natural Law Text – The ‘Free and Equal’ Clauses; Ch. 7: Some Paradigms of Judicial Rhetoric; Part III (Chs. 12, 13) The Moral-Formal Dilemma

Films: \**Amistad* (1997) (d. Steven Spielberg)

*\*Judgment at Nuremburg* (1961) (d. Stanley Kramer)

**WEEK TEN**

**The Cause Lawyer**

Abram Chayes, “The Role of the Judge in Public Law Litigation,” *Harvard Law Review* (1976).

Donald Horwitz, “Are The Courts Going Too Far?” *Commentary* (1977).

\*Kenneth Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Harvard, 2012): Introduction; Chs. 2-6; Chs. 9-10; Conclusion.

Michael Meltsner, *The Making of a Civil Rights Lawyer* (Virginia, 2006).

 “What They Didn’t Teach Me at Yale Law School”

 “A Sense of the Work”

 “So You Want to Be a Lawyer”

**WEEK ELEVEN**

\*Ann Southworth, *Lawyers of the Right: Professionalizing the Conservative Coalition* (Chicago, 2008).

\*Steve Teles, *The Rise of the Conservative Legal Movement* (Princeton, 2008): Introduction; Chs. 1-5; Ch. 7; Conclusion.

# \*Amanda Hollis-Brusky and Joshua Wilson, *Separate but Faithful: The Christian Right's Radical Struggle to Transform Law & Legal Culture* (Oxford, 2020): Introduction; Chs. 1-6; Conclusion.

**WEEK TWELVE**

**Guest Lecture: Chris Marchese (BC Political Science ’15), Director of Litigation, NetChoice (Washington, DC)**

**WEEK THIRTEEN**

**Judging**

**The Judge**

\*Benjamin Cardozo, *The Nature of the Judicial Process* (1921)

\*G. Edward White, *The American Judicial Tradition*

 Ch. 1, John Marshall and the Genesis of the Tradition

 Ch. 2, Kent, Story, and Shaw: The Judicial Function and Property Rights

 Ch. 8, Holmes, Brandeis, and the Origins of Judicial Liberalism

 [Oral Argument from Oyez].

Albie Sachs, “Tock-Tick: The Working of a Judicial Mind”

 “Reason and Passion”

 “Reason and Judgment”

 “Opinion in The Jordon Case”

 “The Paradox at the Heart of Criminal Procedure”

 “The Meaning of the Vote”

**WEEK FOURTEEN**

**Jury**

\*D. Graham Burnett, *A Trial By Jury* (Vintage, 2001).

\*Jeffrey Abramson, *We The Jury: The Jury System and the Ideal of Democracy*, Ch. 2, “Juries and Higher Justice”; Ch. 3,“Jury Selection and the Cross-Sectional Ideal”

**Conclusion: Legal Institutions, Legal Politics, and Legal Ethics**