

Fall 2018
MPA Public Law
November 2-4
Location: TBD
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"Office hours" by appointment

Tentative Fall 2018 Public Law Syllabus

Description:

"Courts ought not enter this political thicket." So said former U.S. Supreme Court Justice Felix Frankfurter on the topic of voting rights. But what if the court is the last line between minority rights and the tyranny of the majority? What if the court is the last branch left to police the reach of the executive? Should it do so? These questions will form the basic framework of this 2-credit fall elective. Law and policy are two sides of the same coin—you can't make one without the other. Agency and non-profit administrators interface with the law every day, including litigation impacting program mission. This course seeks to give MPA students a basic understanding of the role the judicial branch plays in the business of governing. We will study the roots of judicial power, as well as how agencies in the executive branch get the authority to do what they do--i.e., an introduction to constitutional law. Overall, we will explore the civil (and occasionally criminal) justice system with the idea that a better understanding of our third branch of government makes us better citizens and better leaders.

Learning Objectives:

1. Gain a basic knowledge of how legal system works, including how agency rules are challenged.
2. Understand how regulations are created, implemented, and interpreted.
3. Acquire basic comfort with reading judicial decisions and legal briefing.
4. Acquire a basic knowledge of how to read laws and regulations, but not a "law school education."

Readings:

Text

Handbook of Public Law and Administration (Handbook), ed. Cooper and Newland, Jossey-Bass Publishers, San Francisco, 1997, ISBN 0-7879-0930

Jay Feinman, *Law 101: Everything You Need to Know About American Law*, 5th Edition

Selected Canvas-Available Readings

1. *The Rise and Rise of the Administrative State*, Gary Lawson, *Volume 107 Harvard Law Review*, beginning p. 1231 (1994)
2. *Chevron U.S.A. v. Natural Resources Defense Council*, 468 U.S. 1227 (1984).
3. *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142 (2016).
4. Listen: More Perfect (podcast) Season 1, Episode 5: Kitten Kick the Giggly Blue Robot All Summer <https://www.wnycstudios.org/story/giggly-blue-robot>
5. Listen: More Perfect, Season 1, Episode 2: The Political Thicket <https://www.wnycstudios.org/story/the-political-thicket>
6. *Swinomish Indian Tribal Community v. Department of Ecology*, 178 Wn.2d 571 (2013) & briefs
7. Listen: Washington v. Trump Oral Argument <http://cdn.ca9.uscourts.gov/datastore/media/2017/02/07/17-35105.mp3>
8. Watch: Commentary, <https://www.nytimes.com/video/us/politics/100000005187699/supreme-court-travel-ban-trump.html>
9. *Trueblood* Orders, FOFs, COLs, Etc.
10. *Trueblood* 9th Cir. Oral Argument http://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000008698

***** Please note that additional canvas-available readings may be assigned; see syllabus and Canvas.**

Available on the legislature's website, www.leg.wa.gov, Laws and Agency Rules Tab

Chapter 34.05 RCW (Washington State Administrative Procedures Act); Chapter 42.56 RCW **Schedule:**

****** Schedule is subject to change at any time! Please pay attention to emails or other notifications!!**

Friday Nov. 2, 2018

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
The judicial branch	<ul style="list-style-type: none"> • Lawson, <i>The Rise and Rise of the Administrative State</i> • <i>Handbook</i>, Part I • <i>Law 101</i>, Chapter 2 • <i>Law 101</i>, Chapter 3 to page 63 only. • <i>Chevron v. Natural Resources Def. Counsel</i> • Majority and Concurrence in <i>Gutierrez-Brizuela v. Lynch</i> • More Perfect (podcast) Season 1, Episode 5: Kitten Kick the Giggly Blue Robot All Summer https://www.wnycstudios.org/story/giggly-blue-robot 	Discussion/seminar

Saturday November 3, 2018

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
Legal Interpretation	<ul style="list-style-type: none"> • <i>Handbook</i>, Part II and III 	
Rules Drafting	<ul style="list-style-type: none"> • <i>Handbook</i>, Chap. 12 • Skim Part III of RCW 34.05 	Small-Group: Draft-A-WAC!
Rule Challenges: Judicial Review	<ul style="list-style-type: none"> • (<i>Handbook Part 11</i>), <i>Handbook Chap 25</i> • Skim Part IV and V of RCW 34.05 • <i>Swinomish Tribe v.</i> 	Guest: TBD

	<p><i>Dept. of Ecology (including dissent) & <u>skim</u> briefs</i></p>	
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Sunday, November 4, 2018

<p>Courts in the Political Fray</p>	<ul style="list-style-type: none"> • Trump oral arguments • More Perfect – The Political Thicket 	<p>Guest: TBD</p>
<p>Law and Policy: Budget & Program Mission Impacts</p>	<ul style="list-style-type: none"> • <i>Handbook</i>, Ch. 24 & 28 • <i>Skim</i> <i>Trueblood Defs COLs&FOFs, Plfs COLs&FOFs,</i> • <i>Courts COLs & FOFs (read more carefully - notice from whom the District Court borrowed its Findings of Fact and Conclusions of Law in its own FOFs and COLs).</i> • <i>District Court Order</i> • Watch <i>Trueblood Ninth Circuit Oral Argument:</i> http://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000008698 	<p>Guest?: TBD</p>

Court visit discussion/Wrap Up		
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Assignments:

I expect all written assignments to be your best effort, proofread and polished.

Assignment #1 – Court visit

Before our last class meeting, choose any court to visit and observe. To get the full flavor of the proceedings, attend at least one hour of hearings. Attend in person; televised proceedings, while convenient, limit your point of view to that of the camera. You may complete this assignment in pairs or small groups of 3-4 people. **Due:** November 4, 2018

After your visit, whenever it is, email me the following: the court you visited, date and time, who the presiding judge(s)/commissioner was, and what type of proceeding it was. If you are working with others, each person must email me the above information. At the last class meeting, there will be time for people to share observations or ask questions about their visit.

The questions below can help focus your thoughts (and you can have them in mind while viewing your proceeding), but you needn't discuss each and every question.

1. Why did you select this particular court to observe?
2. What is the issue or question before the court that needs to be resolved?
 - a. Is there a legal issue?
 - b. Is there a factual issue?
3. What is the role of each person involved in the proceeding?
4. What law do the parties cite as applying to the issue before the court? Constitutional? Statutory? Case law? Rules and regulations?
5. How was the issue resolved?
6. Were you surprised by anything in the proceedings? What?
7. Do you believe the parties were treated fairly? Give examples.
8. Do you believe the outcome was just? Why or why not?
9. What did you learn from your observation?
10. What changes would you recommend to the court? Why?

Assignment #2 —Final Project: Agency Memo

Some time in the first couple weeks of the quarter, you will receive a fact-pattern involving an agency action and a challenge to that action. From the perspective of an agency administrator, you will be asked to write a memo (single spaced, with appropriate paragraph breaks) to your agency's assigned Assistant Attorney General, explaining the action and the challenge. Additional details will be available in the assignment description. This is not a test.

It is a chance to exercise some critical thinking skills in this area. **Due: November 18, 2018 by midnight.**

Housekeeping:

Participation & Attendance: Students are required to attend each class meeting in its entirety. Participation includes focusing on class content, speaking in class and small groups, listening to others, taking notes, completing class interactive exercises, avoiding distractions, and listening to and engaging with the guest speakers. If an absence is unavoidable, please notify me prior to a class and/or seminar absence. *After one 2 hour absence, make-up work may be assigned at my discretion, case-by-case. Makeup work must be completed by the deadline assigned to ensure full receipt of course credit. After an absence or absences totaling 12 hours you may be denied full credit.* Finally, if you do miss a class or portion thereof, you are still expected to do the reading for that class meeting and turn in any assignments that were due that class date.

Late assignments: Turning in assignments late is unacceptable. However, if there is an unavoidable need to turn in an assignment late, please contact me via email no later than the original assignment due date to discuss options. Parameters are left to my discretion on a situation-by-situation basis. Late assignments must be completed by the revised due date to ensure full receipt of course credit.

Credit: Students will receive 2 graduate credits at the completion of the quarter if all course requirements have been satisfactorily completed to meet course objectives. No partial credit will be awarded. Incompletes will not be awarded. Full loss of credit decisions will be made by the faculty. *Plagiarism (i.e., using other peoples' work as your own) will result in total loss of credit for the class and may result in expulsion from the MPA program.* Failing to complete one or more assignments or multiple absences may constitute denial of total credit. Unexcused absences or lack of academic work may result in no credit at my discretion. Students will also be evaluated based upon their progress towards the learning goals that will be assessed from classroom, seminar, and assignment performance. Decisions for no credit will be made when necessary, based on absence or failure to meet academic course requirements.

Evaluation: Written self-evaluations **are required** for credit at the end of the quarter. Faculty evaluations are greatly appreciated and encouraged.