Our course materials

There is no assigned book for the seminar. Instead, for the first half of the seminar, we will be reading and discussing the contents of law review articles, cases and statutes, and other miscellaneous comparative materials. This material will either be copied for you to be picked up outside my office or it will be available to you on TWEN.

Seminar objectives

This is first and foremost a writing course. The first goal of the seminar is to help you improve your legal writing. Writing is a very important skill for practitioners and my hope is that your writing will benefit from being critiqued and edited.

A related objective is simply to give you a chance to tackle a particular topic in more depth than is possible in a regular course (or even in practice). You have a chance to become quite knowledgeable about your particular topic.

Email addresses

It is important that I know your email address. TWEN is a help in this regard. But I would prefer to be able to make an independent list of seminar email addresses as it is sometimes easier to use my own list rather than rely on TWEN. One reason I like to have email addresses easily accessible is that I often come across articles that I think might help a student with a topic and I need a way to bring the article to the student’s attention quickly. You may also need to reach me and it is nice to have this method of communication. Once we have settled on topics, I also like each student to have email addresses of other students so that a student can send information that they happen to come across that seems helpful to another student’s topic to that other student.

So I will ask each of you to email me at the start of classes and that will permit me to easily “take” your email address and put it on my own list. My email address is HYPERLINK "mailto:pizzi@colorado.edu" pizzi@colorado.edu.

Our Seminar Topic

This semester will focus on comparative criminal procedure. Obviously, it is a topic that I love and hope that you will enjoy the material we study. One quotation I use often in lecturing about comparative work is the following:

“For only by making comparisons can we distinguish ourselves from others and discover who we really are, in order to become all we are meant to be.”
This quotation captures the theme of this seminar – to get us outside our own tradition and see ourselves – our strengths and weaknesses - in a different light.

I will put my resume up on TWEN and you can see the comparative articles I have written or co-written. If there is any topic that strikes your interest and you might want to pursue a related topic, by all means feel free to discuss it with me.

**Format of the Seminar**

During the first half of the semester, we will read and discuss a number of topics, along with some articles and cases, designed to give us an overview of some important issues in the area of. The second part of the semester will be devoted to presentations of paper topics, probably two per seminar meeting.

**Paper Topics**

One of the initial difficulties in any seminar is getting students connected with good topics. A good topic, in my opinion, is one that is interesting as well as one that a student can handle with available sources. In this seminar that may be a bit difficult as I will be introducing comparative materials that will be new to many of you. But I will try to give you an idea of the range of topics at our first meeting to get you started on finding a topic.

While it is possible that some papers may be purely historical in nature, past experience suggests that most will probably end up proposing changes to our system of criminal procedure based on comparative study (or arguing that certain features of a foreign system should not be adopted in the US).

One nice thing about an academic seminar that I hope makes finding a topic less stressful is that we don’t have to worry about the political feasibility of any reform we might propose. So if you want to abolish peremptory challenges (as England has done) or you want to change our rules of ethics to more sharply restrict comments from trial attorneys to the press during trial (again following the English model), you can do it without having to worry about the political battles that any such proposal would engender.

**The Writing Schedule**

I would like to have a written topic proposal and from each of you no later than our fourth class meeting (September 19). The proposal need only be two or three pages in length, maybe shorter in some cases. It should (1) describe the topic, (2) suggest an outline for the paper; and (3) indicate what preliminary research in the library has shown about resources for studying the topic.

I want to meet with each of you to discuss your proposal. I am in my office most days, but Tuesdays and Thursdays are very good days for me as my classes are on Monday and Wednesday.
At our second meeting of the semester, I will circulate a signup sheet for paper presentations. Obviously, those with earlier paper presentations have the disadvantage of less time to draft a paper, but there is then more time to incorporate comments and finish the paper before the end of the semester rush.

I usually end the seminar with a social evening at my house. This year – because the seminar is likely to be 13 or 14 students - we will hold the final seminar meeting at the Law School, but then adjourn to my home after the presentation(s) for some socializing.

**Grading**

Grading is difficult in seminars but let me try to explain the factors I use in grading. The first factor is seminar participation. To a large extent we should be teaching each other in a seminar. Seminar participation includes presentations or papers that I assign to you during the first part of the semester, your weekly oral contributions to the success of the seminar, your presentation of your paper to the seminar, and the help you give fellow students when they present their papers. I assume weekly attendance at the seminar and reserve the right to lower the grade of anyone who misses more than one seminar meeting.

Obviously, the main component of the final grade will be your research paper. In grading such papers, I take into account factors such as: (1) the quality of the research, (2) the way the subject is organized and presented, (3) the clarity of the writing, and (4) the quality of the first draft.

Because topics will always vary in terms of the material that is available for a given topic, I am reluctant to give a firm “required” length for the final paper. But I would think that thirty (30) double-spaced pages would be the rough length of a good paper. But this may vary depending on the topic.

Finally, let me say with respect to your research papers that I try to give very specific guidance on the rough draft. The one thing that I can guarantee all of you is that I will go over your draft carefully and try to give you feedback on both the substance of the paper as well as your organization and your writing. This is one of the relatively few opportunities law students have to get critiqued on their writing so I will try to be conscientious and thorough. One warning in advance: do not be upset if I write a lot on your draft. It is easier to write a lot on a good draft than on a poor draft where there is much less with which to work.

I do not mark up the final paper, nor do I return the final paper. (So if you want to use your seminar paper as a writing sample for possible employment purposes, you should make a copy for your records.)

**Meetings and Tentative Early Discussion Topics**

1. **August 29: Seminar introduction**

At this meeting, I want to talk generally about the format of the seminar, the "rules" of the seminar, the writing schedule, and other preliminary matters. I also want to
go over some possible topics to get you thinking about the sorts of subjects that you might find interesting. Then we will turn to an account of a German trial. It is “The Trial of Dr. Brach” which tells the tale of a trial in 1959. It is an excerpt from a book by John Langbein entitled COMPARATIVE CRIMINAL PROCEDURE: GERMANY that is now out of print. It is a rather famous book among comparatists in the field. You can pick up a copy of the reading on the chair outside my office (464).

2. September 5: Structures of authority in the continental and US systems

For this meeting, I would like you to read two articles. The first is a short essay by me entitled Punishment and Procedure: A Different View of the American Criminal Justice System, that appeared at 13 Const. Comm. 55 (1996). It should be available on Westlaw. I am assigning that essay because it gives you background on comparative topics as I range over several European countries in this essay.

The main article for discussion at this seminar is Mirjan Damaska, Structures of Authority and Comparative Criminal Procedure, 84 Yale L.J. 483 (1975). This is not an easy article so give yourself time to read it slowly. But it is very beautifully written and provides a more philosophical way of comparing the continental tradition versus the common law tradition. Damaska has an international reputation for his work on comparative criminal procedure and this article will help show why.

3. September 12: Looking at another common law system: England

At this seminar meeting, we will start by discussing part of a chapter on England that is from the book, COURTS, LAW AND POLITICS IN COMPARATIVE PERSPECTIVE. I will send it to you as a PDF file. For this session, I will also assign different students to familiarize themselves with some of the rules of ethics that govern barristers in criminal cases in England. These rules are available online at [[http://www.barstandardsboard.org.uk/standardsandguidance/codeofconduct/section1codeofconduct/]]

4. September 19: Ten ways in which “adversariness” is restrained in England

At this seminar meeting, I want to discuss with you some of the ways in which the English system keeps reins on the level of “adversariness” among barristers. This is really sort of an overview of the English system that will build on some of the material covered in the previous class. For this meeting, we will discuss Peter Tague’s article, Guilty Pleas and Barristers’ Incentives: Lessons from England, which appears at [[20 Geojle 287]] (2007). The ten ways in which barristers are restrained are: the divided bar and the professional client, the economics of practice for barristers, the tradition of switching sides, the rules of ethics re. duty to court, the need for frequent trials for barristers, the concept of “taking instructions” from clients, rules of evidence on prior
convictions, the limited pretrial preparation, the enhanced authority of trial judges, and
the obligation of a barrister “to put her case” to opposing witnesses.

5. September 26: Two topics: (1) interrogation in England and (2) the excusionary
rule in Canada

For this seminar meeting, I would like you to read sections 34-38 of the Criminal
Justice and Public Order Act of 1994 that permits the use of certain inferences from
silence in England. The statute is available lots of places on the web including:
HYPERLINK

We will also discuss the Canadian version of the exclusionary rule. For this
assignment read, section 24 of the Charter of Rights and Freedoms which can be found

We will discuss this provision as well as Regina v. Collins, a Canadian Supreme
Court decision that is available on the web at

6. October 3: Two topics: plea bargaining or trial simplification agreements and
sentencing in the US and abroad

At this point, we will know the English approach to plea bargaining, so maybe we
will review that and then talk about the way Germany simplifies trials. Of course, we
might talk about countries like Sweden where there is no plea bargaining at all.

With respect to sentencing, we will compare US v. Watts, [[519 U.S. 148 ]](1997)
where a D was sentenced to more prison time based on a count on which he had been
acquitted with an English case that strikes down a sentence based on outside evidence on
the scope of the D’s fraud. The English case is Regina v. Evans (1999) and it is available
at: http://www.ipo.gov.uk/mcps/revans.htm

7. October 10: A look at a system from a radically different culture

Most likely we will discuss the role of apology and remorse in Japanese criminal
justice. Maybe we will also talk in connection with Japan about the upcoming attempt to
transplant a jury system into a country in which direct disagreement is frowned upon.
(There is a July 16 NYT article entitled Japan Learns Dreaded Task of Jury Duty article
on this topic at
[[http://select.nytimes.com/search/restricted/article?res=F00F10FC3D550C758DDDAE0
894DF404482]]).

8. October 17 : Presentations

9. October 24: Presentations
10. October 31: Presentations

11. November 7: Presentations

12. November 14: Presentations

13. November 21: Presentations

14. December 5: Presentations at 860 Grant Place.