

The Sociology of Law
SOCY 226.00
Professor Robert Garot

TTh, 1:10-2:30, SUN001
Office: Palme House 106

Perspectives and Overview of the Course

This course applies a sociological perspective to the legal profession. The emphasis of the course is on sociology, not necessarily law. If you are interested in becoming a lawyer, this course will not begin to provide you with the tools of the trade. However, it will help you look critically at that trade, towards understanding it sociologically.

We will begin by examining some of the general perspectives of the law and society field. We will then probe how sociologists have grappled with the legal profession, in terms of expectations of the public, historical and critical perspectives on legal education, the social structure of the bar, and the professionalization and feminization of the legal profession. In the second section, we will then examine American lawyers, focusing on how they establish a practice, lawyers for the rich and lawyers for the poor, and the role of courts in a community. Finally, we will turn towards the milieus in which lawyers work: the adversary system, plea bargaining, the jury system, and mediation practices. Through a thorough and critical examination of these aspects of law, you will not learn how to be a lawyer, but you will gain insight into perspectives on the law and what lawyers do.

It is essential that you *wrestle* with the readings for each week, and *mull over* how they apply to your own experience. I hope to open new perspectives to you, and what transforms information into a perspective that reveals new ways of thinking is wrestling with what you encounter. For each reading, I hope that you work to understand not just *what* the author is saying, but *why*. What received wisdom is she or he trying to challenge? With what ideas might they be competing? What is their evidence? I hope that you will enhance for yourself the value of what you read through the paired (and perhaps literally opposed) habits of mind of skepticism (Ought I really believe that?) and suspended disbelief (What if it were true?).

The idea is to foster an intense, searching class discussion. A great deal of learning happens in discussion, when one's new ideas, guesses, hunches, ideological convictions, and moral persuasions rub unexpectedly up against others'. I will assist this process through my questioning in class, and want you to have challenged each reading so that you, in turn, can be challenged by others in class. *Course readings are available on reserve in the library.*

Please feel free to discuss topics further with me after class or during office hours. *Be sure to exchange phone numbers with two or three other students and form study groups.*

Requirements

This course is designed to facilitate your gradual progress towards constructing a final paper which analyzes one of the topics of the course in light of an interview with a legal practitioner. Three exams and a grade for participation will test your knowledge of general course materials.

Weekly Presentation

For this course, you are required to become an expert on one week's readings. You will be responsible for presenting that week's readings in light of *at least three additional sources* from the legal, sociological, and general literature found through the library. *Be sure to discuss your presentation with me beforehand.* You may use any of the props which are available in class to facilitate your presentation, worth 10% of your course grade.

Term Paper

Your final paper will consist of an analysis of an interview with a legal practitioner, analyzed in terms of the themes and findings of the readings assigned in class for your weekly presentation, and *at least five additional sources*. Final papers are due Thursday, May 6th; I will also accept papers on Tuesday, May 11th, with a deduction of five percentage points. *I do not accept papers sent electronically.*

Exams

Three exams are required for this course, each worth 20% of your grade. The exams will be composed primarily of short answer and short essay questions, although I may occasionally use a multiple choice, matching, or true/false format. Exams will be based on readings and lectures. *I will make special accommodations regarding exams (rescheduling, etc.) only for those students who have discussed their concerns with me ahead of time, and have provided documentation of the necessity for accommodation.* Further details about exams will be discussed in class.

Participation

Five percent of your course grade will be based on how well you demonstrate knowledge of each week's readings through attendance and participation. In addition, I may provide quizzes to assure your familiarity with a week's readings.

Grading Policy

You will not be graded on a competitive basis, so in theory everyone can do well in the class. However, in order to get a top grade, students will be expected to achieve standards of excellence in their work. If you are dissatisfied with any grade you receive, you must submit a written request for a review of the grade, including a defense, no later than one week after the work is handed back to the class. By requesting a review of the grade you receive, you invite the possibility that the new grade will be lower than the original grade, as well as the possibility that it will be higher. Points will be distributed as follows:

Weekly Presentation: 10%

Final Paper: 25%

Exams (3): 60%

Participation: 5%

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|-----------|----------|----------|----------|
| A+ 98-100 | B+ 88-89 | C+ 78-79 | D+ 65-69 |
| A 93-97 | B 83-87 | C 73-77 | D 55-64 |
| A- 90-92 | B- 80-82 | C- 70-72 | D- 50-54 |

Cheating/Plagiarism

Any cases of cheating or plagiarism will be referred to the College Provost. For guidelines on avoiding these offenses, please see your Student Handbook.

Required Readings

All readings for this course are held on reserve in the library, and some are on electronic reserve. Be sure to complete each week's readings PRIOR TO coming to class.

Weekly Topics and Readings

Please note that the following schedule, including project and exam dates, is tentative, and may change based on how quickly we cover the material.

Part I: Background and Context

Week 1: Introduction to Law and Society

Tuesday, January 20th and Thursday, January 22nd

Abel, Richard. "What We Talk About When We Talk About Law." The Law and Society Reader #1.

Friedman, Lawrence M. 1986. "The Law and Society Movement." Stanford Law Review. 38:763-780.

Richard Lempert. 1988. "Between Cup and Lip: Social Science Influences on Law and Policy," Law & Policy 10:167-200.

Part II: Sociological Perspectives on the Legal Profession

Week 2: Law and the Public

Tuesday, January 27th and Thursday, January 29th

O'Barr, William M. and John M. Conley. "Lay Expectations of the Civil Justice System." The Law and Society Reader #18.

Sarat, Austin and William L.F. Felstiner. "Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction." The Law and Society Reader #19.

Week 3: Legal Education

Tuesday, February 3rd and Thursday, February 5th

Stevens, Robert. 1983. Law School: Legal Education in America from the 1850s to the 1980s. Chapel Hill: University of North Carolina Press. Pp. 35-72.

Kennedy, Duncan. 1982. "Legal Education as Training for Hierarchy," in David Kairys, ed. The Politics of Law. New York: Pantheon. Pp. 40-61.

Granfield, Robert. 1991. "Making it by Faking it: Working-Class Students in an Elite Academic Environment." Journal of Contemporary Ethnography. 20(3):331-351.

Week 4: Professionalization

Tuesday, February 10th and Thursday, February 12th

Abel, Richard. 1979. "The Rise of Professionalism." British Journal of Law and Society. 6:82-98.

_____. 1981. "Why Does the ABA Promulgate Ethical Rules?" Texas Law Review. 59:639-99.

_____. 1986. "The Decline of Professionalism?" Modern Law Review. 49:1-41.

Whyte, William F. "Interviewing in the Field."

Term Paper: Find Interviewee. Make appointment with interviewee between 2-26 and 3-13.

Week 5: The Social Structure of the Bar

Tuesday, February 17th and Thursday, February 19th

Heinz, John P. and Edward O. Laumann. 1982. Chicago Lawyers: The Social Structure of the Bar. New York: Russell Sage Foundation; Chicago: American Bar Foundation. Pp. 167-208.

Abel, Richard L. 1989. American Lawyers. Oxford University Press: New York. Pp. 166-211.

Term Paper: Turn in interview schedule on February 19th.

Week 6: The Feminization of Law?

Tuesday, February 24th and Thursday, February 26th

Epstein, Cynthia Fuchs. 1981. Women in Law. New York: Basic Books. Pp. 278-302.

Menkel-Meadow, Carrie. 1985. "Portia in a Different Voice: Speculations on a Women's Lawyering Process." Berkeley Women's Law Journal. 1:39-63.

Tuesday, March 2nd: Exam #1

Part III: Lawyers' Work

Week 7: Lawyers

Thursday, March 4th

Seron, Carroll. 1996. The Business of Practicing Law: The Work lives of Solo and Small-Firm Attorneys. Temple University Press: Philadelphia. Pp. 1-18.

Sarat, Austin and William L.F. Felstiner. 1995. Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process. Oxford University Press: New York. Pp. 1-23.

Landon, Donald D. 1990. Country Lawyers: The Impact of Context on Professional Practice. Praeger Publishers: New York. Pp. 1-17.

Saturday, March 6th to Sunday, March 21st: Spring Break

Term Paper: Conduct Interview and Transcribe.

Week 8: Lawyers for the Rich

Tuesday, March 23rd and Thursday, March 25th

Mann, Kenneth. 1985. Defending White-Collar Crime: A Portrait of Attorneys at Work. Yale University Press: New Haven. Pp. 3-18, 103-123, 229-250.

Charmaz, Kathy. 2001. "Grounded Theory." Pp. 335-352 in Robert M. Emerson (Ed.) Contemporary Field Research. Prospect Heights, Illinois: Waveland.

Term Paper: Open Coding.

Week 9: Lawyers for the Poor**Tuesday, March 30th and Thursday, April 1st**

Katz, Jack. 1982. *Poor People's Lawyer's in Transition*. New Brunswick, New Jersey: Rutgers University Press. (selected excerpts)

Term Paper: Focused coding.

Week 10: Courts and Community**Tuesday, April 6th and Thursday, April 8th**

Nader, Laura. 1969. "Styles of Court Procedure: To Make the Balance." Pp. 69-91 in Nader (Ed.), Law in Culture and Society. Chicago: Aldine.

Felstiner, William. "Influences of Social Organization on Dispute Processing." Pp. 45-76.

Yngvesson, Barbara. 1994. "Making Law at the Doorway: The Clerk the Court, and the Construction of Community in a New England Town." Pp. 55-90 in Carol J. Greenhouse et al. (Eds.), Law and Community in Three American Towns.

Term Paper: Complete one analytic memo by 4-8.

Tuesday, April 13th: Exam #2**Part IV: Systems of Justice****Week 11: The Adversary System****Thursday, April 15th**

Luban, David. 1983. "The Adversary System Excuse." In David Luban (Ed.), The Good Lawyer. Towata, New Jersey: Rowman & Allanheld. 1983. Pp. 83-122.

Glaser, William A. 1968. Pretrial Discovery and the Adversary System. Russell Sage Foundation: New York. Pp. 117-161.

Term Paper: Complete one analytic section by 4-15.

Week 12: Plea Bargaining**Tuesday, April 20th and Thursday, April 22nd**

David Sudnow. 1965. "Normal Crimes." Social Problems. 12:255-76.

Maynard, Douglas. 1984. Inside Plea Bargaining. New York: Plenum Press. Pp. 29-53, 103-118.

Term Paper: Rough draft due 4-22.

Week 13: The Jury System**Tuesday, April 27th and Thursday, April 29th**

Ellsworth, Phoebe. 1989. "Are Twelve Heads Better Than One? Law and Contemporary Problems." 205.

Hans, Valerie and Neil Vidmar. 1986. Judging the Jury. Pp. 31-44 and 97-112.

Week 14: Mediation, Facilitation and Compensation**Tuesday, May 4th and Thursday, May 6th**

Silbey, Susan S. and Sally E. Merry. "Mediator Settlement Strategies." Pp. 111-136, and 183-208.

Thursday, May 6th: Final Paper Due**Tuesday, May 11th, 6:30 PM: Final Exam**

Final Paper: Interviewing a Legal Professional

Writing a paper based on interview data may be different from papers you have written for other courses, in that the paper will be inductive. In other words, you will not be trying to test a hypothesis, or prove a theory, but you will develop your thesis based on the data. This is often called a “grounded” approach, meaning that your analysis will be grounded in your data, and you will work from data to theory, rather than working top down, from theory to data. This does not mean that your data collection will not be theoretically informed. It does mean that you will not quite know what your paper will be about until after you have conducted, transcribed and coded, and analyzed your interviews. Even then, your data may still present surprises.

Since so much work will be put into the *process* of writing this paper, you will need to follow a schedule, and document your progress. Keep track of your progress on the attached documented on your interview progress sheet. One-third of your paper grade will be based on your selection of and use of data, and two-thirds will be based on your use of readings and materials from the course.

1. Find an Interviewee (Deadline, 2/12)

For your term paper, you will interview a professional with practical experience in your presentation topic. You may not choose pre-existing friends or family members, nor individuals with whom you maintain a business relationship, such as your family probate attorney or a current or previous instructor. You may choose acquaintances with whom you have come in contact through community involvements, and others you have met briefly, and would like to get to know better. You may begin by asking friends or family members for contacts, by opening up a phone book, or by talking with people on your daily rounds.

Once you’ve found a potential respondent, tell them that you’re a student at Kenyon, and mention your interview topic (women in law, juries, legal education, etc.), and ask if they’d like to be interviewed. If they assent, make sure they are over the age of 18 (those under 18 need parental permission, so you would have to make up a form for that), and willing to be tape recorded. If they agree, arrange to conduct the interview at a mutually agreeable quiet location where you are not likely to be disturbed or interrupted. Schedule at least one and as many as three hours for the interview. Schedule your interview between February 26th and March 13th.

2. Write up an Interview Schedule (Due, 2/19)

Although your interview should proceed like an informal conversation, you should put considerable thought into the sorts of questions you would like to ask. Be sure to write open-ended questions, avoid leading and double-barreled questions, and think about your question order. Once I have checked your questions, you may conduct your interview.

3. Conduct the Interview (Deadline, 3/13)

Make sure to talk as little as possible during your interview. Begin by turning on the tape recorder (!), and reintroduce yourself and your reason for the interview. Assure your respondent that everything they say will be strictly confidential and anonymous. Then conduct your interview, maintaining eye contact throughout. Nod your head often, and use many continuers (“Mm, hm,” “Tell me more about that,” “Really? And then what happened,” etc.). Try to follow the general pattern of the questions you laid out in advance, but do not hesitate to deviate from them. Think of the interview as a mental challenge, in which you are working to unearth the details of your informant’s life. Stay attentive for any lapses, inconsistencies, or areas for further questions; it will be much more difficult to ask about such matters after the interview is over,

than in the heat of the moment. Once you think you have run out of questions, then, and only then, look down at your “cheat sheet” of questions, and ask any that remain. At the close of the interview, thank your respondent effusively, ask them if it would be OK to call for a follow-up, and ask if they’d like to see the transcript and the final paper.

4. Transcribe the Interview (Deadline, 3/21)

Transcribing interviews is not easy work. A good rule of thumb is to set aside 3 hours of transcribing for each half-hour of interview. We should be able to use transcribing machines in the Rural Studies Center. Make all margins one inch, except for your right margin, which should be about 3.5 inches. You may want to listen to your interview tapes a number of times before transcribing.

5. Open Coding (Deadline, 3/25) and 6. Focused Coding (Deadline, 4/1)

In class, we will review and practice two types of coding: open coding and focused coding, as discussed in the reading by Kathy Charmaz. You will work with a partner to code and recode your papers, and highlight the data which is most relevant for building an argument.

7. Prepare One Analytical Memo (Deadline, 4/8)

After you have thoroughly coded your data, take an excerpt of your consultant’s *most poignant* data and analyze it in detail as discussed by Kathy Charmaz. Once you receive feedback on this memo, feel free to continue writing memos based on your data excerpts.

8. Prepare One Analytic Section (Deadline, 4-15)

Find two more *poignant* data fragments which contrast with your first fragment, and write analytic memos for these. Now weave the three fragments together into an analysis in which you compare and contrast their analytic points. Your final paper should contain roughly three such analytic sections.

9. Write a Rough Draft of your Paper (Deadline, 4/22)

Begin with an introductory paragraph, bringing your reader into your essay with an intriguing “hook” or “lead.” Be sure to include a thesis statement, telling your reader your conclusions, and what they should expect to find along the way. Then take about five pages to describe the theoretical foundations of your approach, based in the course readings. Next, proceed with your three (or more) analytical sections bringing in course readings where relevant. Finally, conclude by stating what you have learned, perhaps providing policy recommendations.

General Writing Guidelines*

Format and Presentation

Do not skip lines between paragraphs (like I’m doing here). Use an easily legible font, 12-point size works in most types. Papers should be typewritten, double-spaced with approximately 1" margins. Number all pages. Papers *must* be stapled. This means no plastic binders, no folding the edges together and no paper clips. The following information should appear in the upper right-hand corner of the first page: name, student ID#, date, and paper topic. Skip a line and center your title. Skip another line and begin. A bibliography is a necessary part of a research paper (see Citation, below), and should be attached at the end.

* This document adapted with thanks from Dr. Kerry Ferris' Case Study Essay Guidelines.

General Organization

You should make sure that you read the paper assignment instructions and follow them closely. The most important feature of your paper is that you have *clearly stated and addressed your thesis*. No matter how good your ideas are, if you do not organize your paper around a clear thesis, then you will not do very well.

Academic papers have introductions, bodies, and conclusions. An introduction should be simple and explicit, and describe what you are going to do, and in what order. It should provide a complete "road map" for the rest of the paper. Tell your reader something about the study you are conducting, what you will focus on in the paper, what points you will be making, what you will argue, and what you will conclude. It is perfectly acceptable to use the first person voice and say, "I will focus on ...", after all who is writing this paper, anyway?

The body of the paper must be well organized. You must use paragraphs to divide your thoughts. A paragraph is a set of sentences with one common idea. Each paragraph should have a topic sentence and make one main point. Your argument should flow logically from one paragraph to the next. Please use subheadings if they are appropriate or help the reader navigate through different sections of the paper. I should be able to make sense of your paper, in a general way, by reading the introduction, the first sentence of each paragraph, and the conclusion.

In your analysis, you will need to make explicit links between your "data" and the relevant course material. You will need to organize your paper around a description of the data you are analyzing and a review of the course material that helps to make your points. Don't overlook a review of the course material (even though you know that I already know it). That way I can determine how fluent you are with the concepts, and how well you are able to apply them to your subject matter. There are various strategies for integrating the course material with an analysis of your data, but these are indispensable.

For your conclusion, restate the paper's highlights and take the opportunity to tie things up neatly. You may restate ideas from your opening paragraph. Repeat your thesis and briefly summarize the main evidence you have included. After reviewing your main points, you may speculate, include personal reactions, pose additional questions or suggest avenues for future research, and the like. If you have some doubts about whether your format will work effectively for the assignment, please feel free to consult with me first.

Citation

This is sometimes tricky, but by this point in your academic career, it is essential that you do it correctly. It is expected that you will use material from the texts and lecture to analyze your subject. Thus, whether you use direct quotes or paraphrases, you must give credit to the authors of those words and ideas when they are not your own.

If you cite a lecture, do it this way: (Lecture, 4/1/04). However, relying solely on lecture citations for material that is also in the readings reveals to me that your familiarity with the readings is inadequate. So you should be sure to prioritize. Where appropriate, always cite the original source and not my delivery of it in lecture.

Directly quoted course materials from the readings should be cited in one of the following ways.

"Self-absorption is consistent with the emphasis on self-satisfaction fostered by capitalism in general and advertising in particular" (Karp, 1996:176).

Or alternately:

David A. Karp (1996:176) suggests that, "self-absorption is consistent with the emphasis on self-satisfaction fostered by capitalism in general and advertising in particular."

Also, be sure to cite any ideas that you borrow, not just quoted text. For instance:

Many analysts have noted how self-absorption may be fostered by capitalism (Karp, 1996:176).

Any direct quotation that is longer than three lines needs to be set off from the body of the paper by indenting and single-spacing. Since your papers will be double-spaced and indented only to begin paragraphs, you will see the contrast. Be careful to differentiate between what authors are saying themselves, and what they are citing from other authors. Cite accordingly. Do not string quotes together without putting them in context with your own prose. When you use a direct quote, place it in the context of a sentence that includes an explanation of what the quote means and why it is useful in service of the point you are making.

A full reference, including the author's name, book or article title, publishing information and page numbers will appear in a separate, alphabetically organized bibliography at the end of the paper, under the heading, "References." Refer the bibliographies of our articles as examples.

Style

In general, write as simply as possible. Never use a big word, when a little one will do. Big words don't necessarily convey intellectual prowess – especially when they are awkwardly used. Your word choice should be appropriate to formal writing: no slang, and no contractions ("can't", "don't"), unless you are quoting others or it somehow better helps you to make your point. You must use words that actually exist, and words must be used correctly. Look up definitions and spellings if you are unsure. Spell check often misses words.

Avoid using the indefinite "you". You will notice that I am addressing these instructions to you; that is, I am using the second person. That is because I am giving these instructions to a definite person or set of persons. In your papers, unless you mean to address the reader directly, do not use "you" when you mean to use "one" or "we." Refer to yourself as "I" instead of the royal "we." It is perfectly acceptable to use the first person singular in papers – it is not too informal. Use "we" for the author and the reader together: "We have seen how breaching experiments disturb our taken-for-granted notions about reality." Never refer to "society" as an active agent (that's my pet peeve), as in, "Society requires that people follow norms."

Avoid "*a lot*" (and by the way it's not spelled "alot"), and "*very*". Hemingway and Morrison do not need them, and neither do you. Don't confuse "their/there/they're" or "it's/its", or "to/two/too", or "were/we're/where", etc. Also please differentiate between "suppose" and "supposed" – these are not interchangeable, and are almost always improperly applied. These are sets of words that give students trouble, so please be careful.

Try to avoid using "he", "his", or "mankind" to mean anyone or all in general. If for some reason you have a strong ideological commitment to using "he" as the generic, you may do so, but it is not accurate, and there are other options available.

Make sure that nouns and verbs agree in number. Avoid sentence fragments. Make sure that the sentences you write have subjects and predicates. Verbs are also necessary. Do not leave a clause hanging without these necessary components. Avoid run-on sentences. Make sure that if you link things together in a sentence that you do so by using the proper connective words or punctuation marks. These kinds of mistakes can often be caught by reading your paper aloud. If it sounds wrong, it probably is.

Always follow the parsimony principle, using as few words as possible to make your point.

Process

One way to start is by saying your ideas out loud, and writing them down. Just get the words out of your head and onto the page where you will be able to work with them more easily. I strongly suggest that you write more than one draft of your paper. Most successful papers are begun well in advance of the night before the assignment is due. The best way to start is to just spew out a messy first draft, getting all of your ideas and facts down on paper (if you write long-hand) or your computer screen (if you prefer to word process). Then, a second draft will help you to organize the sections, focus your argument, and refine the content and style.

You must be at this point before you come to see me about your paper. Although I will be unable to read entire drafts, I may be able to discuss specific parts of your thesis or analysis, and/or help you with difficulties in transitions between ideas or sections of your argument. Be sure to correct all spelling and grammatical errors, and properly format the paper for your final draft. You must proofread your own paper. It is not acceptable to turn in a paper with typographical errors, misspellings, nouns and verbs that do not agree, misused words, run-on sentences, sentence fragments, etc. You may want to rewrite the beginning or end of your paper in the last draft. Often in composing your paper, you will have changed your focus or ideas somewhat by the time you finish. You will want to make sure that these changes are reflected in a new version of your introduction or conclusion.

Finally, re-read your own paper and imagine that someone else wrote it. Does it make sense? Fix it, if it doesn't. You may also want to get someone else to read your paper and give you comments. It is often hard to be objective when you are so close in the writing process. If you have trouble with your writing, get help: see me during office hours, or seek assistance from the writing center on campus. For further suggestions on writing, I suggest:

Richlin-Klonsky, Judith and Ellen Strenski (Eds.). 1994. A Guide to Writing Sociology Papers. New York: St. Martin's Press.
Becker, Howard S. 1986. Writing for Social Scientists: How to Start and Finish Your Thesis, Book, or Article. Chicago: University of Chicago Press.

Also, please feel free to visit during office hours for personal assistance.

Good luck, and start writing now!