

ACCESS TO JUSTICE
Judge Darleen Ortega

This jurisprudence course explores "access to justice," taken to mean the individual right to be able to access a system of justice on impartial terms. I recognize at the outset that many of us entered law because we cared about justice but, if we are honest, we notice that most of what we thought of as justice when we entered law school gets taken off the table in every discussion in favor of precedent or the judicial role or "the rule of law" or "neutrality" or "thinking like a lawyer." For this class, your original concept of justice, before you embarked on training that often seems aimed at talking you out of it, is welcome back on the table, and we will struggle together and equip ourselves for a practice of such grappling inside the legal system.

This class is grounded in an orientation that I would identify as spiritual and dialogical. What is missing from the concept of justice that you have been working with since you arrived in law school? What is needed to equip you to ask the hard questions and develop the courage it takes to work for justice? I hope that we will find answers together, and that we will learn to hold questions open and struggle appropriately with discomfort, in hopes of finding even better answers than we can see on a given day.

I. Learning Outcomes

By the end of this course students will be able to:

1. Acquire the tools and language to think cogently about privilege, systems of power and dominance, and racism and other forms of oppression and how they affect the justice system in the U.S.
2. Make informed assessments of your own "access to justice" obligations as lawyers.
3. Assess the strengths and weaknesses of varied access to justice models, and engage with critical shortcomings in access to justice in the U.S.
4. Identify barriers to increasing access to justice on the federal, state, and local levels, and in yourself.
5. Analyze with more depth the "levels" of access needed in criminal law and civil law settings.
6. Understand the ways that traditional lawyering can be incompatible with most conceptions of access to justice.
7. Evaluate whether and how non-traditional lawyering models for justice (legal technology, block and limited legal representation, limited license legal techs, court navigators and ombudsman, liability insurance, etc.) may increase access to justice.

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8. Practice holding questions open and struggling with them to make space for bigger and better answers than the law generally engages.

If I succeed in my aims, you will also leave equipped to be more of who you are meant to be. Seriously.

II. Logistics

Class Info: Mondays and Wednesdays at 3:20-4:50 pm via Zoom.

Judge Ortega: I can be reached at darleenortega@hotmail.com or by phone at 503-310-7789. Texting is fine as well.

Office Hours: My schedule is variable but I am happy to arrange time to meet outside of class time. I encourage you to contact me by email or phone for that purpose.

Attendance Policy: This is a seminar class and attendance is especially important. Because this course relies on dialogue, I will do whatever I can to invite your participation. For real, your contribution matters in this class. I appreciate your patience, understanding, creativity and active participation to make this a rewarding experience and will genuinely welcome your ideas for how to facilitate that. Thank you in advance.

If you are unable to attend class, it is your responsibility to contact me to arrange for you to make up the work that class time represents. Failure to do so may affect your grade.

As much as I would prefer to meet in person, for now we will be meeting via Zoom. This class is dialogue-based and covers difficult subjects, and it will really help to see each other's faces, so for now Zoom will best accommodate that.

Students in Need of Accommodation: Please contact me if you need accommodation. I will involve law school staff as needed.

III. Evaluation

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You'll be graded on a paper on a relevant topic of your choice, subject to professor approval. You will also do one group presentation at the end of the semester. I don't assign specific weights to class preparation or participation, but, along with the written work, each component is a significant factor in your final grade. A student may earn a B grade if the student (1) attends class faithfully; (2) consistently demonstrates careful reading and class engagement (yes, I can tell when a student didn't take time to learn or think about a reading assignment - and when a student hasn't read at all!); and (3) turns in thoughtful and well-written submitted work. **Grades higher than B** require acts of distinction both in submitted work and in-class contributions. You may earn a B+ with distinctive work somewhat above the baseline necessary for a B; earning an A requires effort and performance significantly above it.

Here are some further guidelines for your paper:

- **Purpose.** Your paper is meant to be an exercise in grappling with the hard questions that law often dodges. You do not need to answer all of the questions posed in your paper; leaving questions open while exploring them deeply is often the best course. I am primarily looking for good and deep grappling.
- **Topic.** Your paper topic must be approved by me. Set up a conversation or email dialogue with me for that purpose in time to get your topic approved by March 16.
- **Audience.** Your target audience for your paper is not necessarily an academic, but rather a legal practitioner. Assume you are writing for a generalist lawyer, who has basic legal knowledge, but is not necessarily an expert on your topic. Your paper should provide sufficient background and context for this kind of audience.
- **Length.** The final draft of your paper (including footnotes) should be 20-25 pages double-spaced, 12 point font, 1.5 inch margins.
- **Format.** Please use descriptive headings, topic sentences, logical paragraph structures and all other principles of sound legal writing to organize your paper. Please also include centered page numbers on each page after the first page.
- **Footnotes.** The final draft of your paper should include footnotes with citations to relevant sources. The citations in your footnotes should demonstrate to a skeptical reader that your paper is supported by thorough and well-informed research. All citations in your final draft should conform to the Bluebook. If your

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paper is primarily a reflection paper (which is permitted), you may not need as many footnotes. As long as I prefer your topic, that is acceptable.

- **Final Due Date.** You must email me the final draft of your paper no later than midnight on April 29.

- **Writing Requirement Option.** If you have not already fulfilled the Law School's Writing Requirement, you may elect to write a paper that would satisfy the Writing Requirement. If you elect to pursue this Writing Requirement option with your final paper, you must (a) coordinate with a full-time professor to do the necessary supervision; (b) comply with the substantive and length requirements set forth in the Law School's Writing Requirement guidelines, rather than what is set forth above; and (c) notify me by email **before our third (3rd) class session** that you intend to pursue this option and who will be performing the supervision. Papers written to satisfy the Writing Requirement will be graded on a separate track from other papers (to account for the additional time, effort, and research necessary to satisfy the Writing Requirement).

IV. Loosely held course outline

Main Texts: Deborah L. Rhode, *Access to Justice* (Oxford University Press 2004) (ATJ) and Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (NJC)--please buy the Tenth Anniversary edition, which includes important additional materials.

Additional assigned texts and podcasts are available online using the links provided below. This will evolve throughout the semester so reading ahead won't necessarily serve you.

DATE	TOPIC	READING
M 1/10	<i>Introduction: The Big Picture of Law School</i>	<ul style="list-style-type: none">• Course Introduction & Goals • Duncan Kennedy, Legal Education as Training for Hierarchy in D. Kairys, ed. <i>The Politics of Law</i> (1998)

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W 1/12	<i>The Work of Social Justice</i>	<ul style="list-style-type: none"> William P. Quiqley, Letter to a Law Student Interested in Social Justice, 1 DePaul J. for Soc. Justice 7 (2005)
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W 1/19	<i>Access to Justice Stats (Peruse these...)</i>	<ul style="list-style-type: none"> Legal Services Corporation, The Justice Gap Report (2017) American Bar Association, Report on the Future of Legal Services in the United States (2016) Oregon State Bar Association, Executive Summary, Report on the Future of Legal Services in Oregon (2017)
M 1/24	<i>The Justice Gap I</i>	<ul style="list-style-type: none"> ATJ Chapters 1-3 1619 Podcast, episode 1 and accompanying article by Nikole Hannah-Jones: https://www.nytimes.com/2019/08/23/podcasts/1619-slavery-anniversary.html
W 1/26	<i>The Justice Gap II</i>	<ul style="list-style-type: none"> ATJ Chapters 4-6 1619 Podcast, episode 2 and accompanying article by Matthew Desmond: https://www.nytimes.com/interactive/2019/08/14/magazine/slavery-capitalism.html

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<p>M 1/31</p>	<p><i>The Role of the Bar, foundations of the legal system</i></p>	<ul style="list-style-type: none"> • Justice Neil M. Gorsuch, "Access to Affordable Justice," <i>Judicature</i>, Vol. 100, No. 3 (2016) • Deborah L. Rhode and Lucy Ricca, "Protecting the Profession or the Public? Rethinking Unauthorized Practice of Law Enforcement," 82 <i>Fordham L. Rev.</i> 2587 (2014) • Throughline podcast, 1/21/21, "The Anatomy of Autocracy" https://www.npr.org/2021/01/20/958828047/the-anatomy-of-autocracy-timothy-snyder • Timothy Snyder, "The American Abyss" https://www.nytimes.com/2021/01/09/magazine/trump-coup.html
<p>W 2/2</p>	<p><i>The Role of Government/Politics</i></p>	<ul style="list-style-type: none"> • The Legal Services Corporation Act, 42 U.S.C. 2996 et seq. • <i>Eusiquio v. State ex rel Dept. of Human Services</i>, 243 Or App 100, 259 P3d 917 (2011). • <i>Jamison v. McClendon</i>, 476 F. Supp. 3d 386 (2020) <p>Prompt</p> <p><i>What limitations are placed upon the Legal Services Corporation? What limitations are placed on LSC grantees?</i></p>

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<p style="text-align: center;">M 2/7</p>	<p style="text-align: center;"><i>The Role of Tradition</i></p>	<ul style="list-style-type: none"> ● George Critchlow, “Beyond Elitism: Legal Education for the Public Good” (2015) ● Interview with Riaz Tejani (Author of “Lawmart: Justice, Access and For-Profit Law Schools)(Aug. 22, 2017) ● Rebecca Mendoza Nunziato, Decolonize Everything, “Decolonize the Academy with Derrick Hudson” (2020) (https://www.listennotes.com/podcasts/decolonize-everything-rebecca-mendoza-zx5CytSN1Ji/)(podcast)
<p style="text-align: center;">W 2/9</p>	<p style="text-align: center;"><i>The Role of Bias and Privilege I - Moral Licensing</i></p>	<ul style="list-style-type: none"> ● Malcolm Gladwell, Revisionist History, Season I, Ep 1: “The Lady Vanishes” (2016) (podcast) ● Michelle Anderson, “Legal Education Reform, Diversity, and Access to Justice”
<p style="text-align: center;">M 2/14</p>	<p style="text-align: center;"><i>The Role of Bias and Privilege II</i></p>	<p>(1) Malcolm Gladwell, Revisionist History, Season II, Ep. 3, “Miss Buchanan's Period of Adjustment” (The story we miss behind <i>Brown v. Board of Education</i>)</p> <p>(2) The problem of tokenism: Darleen Ortega, <i>Street Roots</i>, “We Must Overcome Tokenism to Achieve Real Equity” https://news.streetroots.org/2018/08/03/we-must-overcome-tokenism-achieve-real-equity</p>

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W 2/16	<i>The Right to Counsel Movement</i>	<ul style="list-style-type: none"> ● Benjamin Barton and Stephanos Bibos, Triaging Appointed Counsel Funding and Pro Se Access to Justice (2012) ● Response: John Pollock and Michael Greco, It's Not Triage If the Patient Bleeds Out (2012)
M 2/21	<i>Systemic injustice</i>	<ul style="list-style-type: none"> ● Gary Blasi, Framing Access to Justice: Beyond Perceived Justice for Individuals, 42 Loy. L. A. Rev. 913 (2009) ● 1619 podcast, episode 5, parts 1 and 2, "The Land of Our Fathers" https://www.nytimes.com/2019/10/04/podcasts/1619-slavery-sugar-farm-land.html?action=click&module=audio-series-bar&region=header&pgtype=Article ● Scene on Radio podcast, episode 43, "Losing Ground" https://www.sceneonradio.org/episode-43-losing-ground/
W 2/23	<i>Mandatory Pro Bono/Life in the trenches</i>	<ul style="list-style-type: none"> ● ATJ, chapters 7-8 ● Rima Sirota, "Making CLE Voluntary and Pro Bono Mandatory: A Law Faculty Test Case" https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3062&context=facpub ● Serial podcast, Season 3, episodes 1 and 2: https://serialpodcast.org/
M 2/28	<i>The Judicial Role / Life in the trenches</i>	<p>Anna E. Carpenter, Active Judging and Access to Justice (2017)</p> <ul style="list-style-type: none"> ● Serial podcast, Season 3, episodes 3 and 4: https://serialpodcast.org/

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W 3/2	<i>Procedural Justice/ Life in the trenches</i>	<ul style="list-style-type: none"> • Tracy Meares, Is Procedural Justice the Secret Ingredient? (2014) • Serial podcast, season 3, episodes 5, 6, 7: https://serialpodcast.org/
M 3/7	<i>Procedural Justice/ Life in the trenches</i>	<p>Tracy Meares and Tom Tyler, Justice Sotomayor and the Jurisprudence of Procedural Justice (2014)</p> <ul style="list-style-type: none"> • Serial podcast, season 3, episodes 8 and 9: https://serialpodcast.org/
W 3/9	Mass incarceration I	<ul style="list-style-type: none"> • Introductory session on "The New Jim Crow"--read Preface to the 10th Anniversary Edition, Forward, Preface, and Introduction
M 3/14	Practitioner roundtable	We will have as our guests a public defender and a former prosecutor who works for the Clackamas County Sheriff's office
W 3/16	Practitioner roundtable DEADLINE FOR OBTAINING APPROVAL FOR YOUR PAPER TOPIC	We will have as our guests an attorney who works in environmental policy, a civil rights attorney, and a formerly incarcerated person who worked as a "jailhouse lawyer"
M 3/28	Practitioner roundtable	We will have as our guests two immigration attorneys and the co-founder and Executive Director of Oregon Justice Resource Center

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W 3/30	Practitioner roundtable	<p>We will have as our guests the lead attorney for the Women's Justice Project at Oregon Justice Resource Center and also a legal aid attorney</p> <p>In preparation for our study of "The New Jim Crow," please also give a listen to these stories of a black woman's experience of the dependency and criminal legal systems:</p> <p>https://www.npr.org/2020/12/02/941319607/prison-to-prison-pipeline-isis-tha-saviour</p> <p>https://www.npr.org/2020/12/03/941449297/becoming-isis-tha-saviour</p>
M 4/4	Mass Incarceration II	Group report-outs on "The New Jim Crow" chapters 1 and 2
W 4/6	Mass incarceration III	Group report-outs on "The New Jim Crow" chapters 3 and 4
M 4/11	Mass incarceration IV	Group report-outs on "The New Jim Crow" chapters 5 and 6
W 4/13	Connecting the dots: women, prison abolition	<p>Louder Than a Riot, episode 9 - "The Prison to Prison Pipeline"</p> <p>Becoming Isis Tha Saviour - be sure to watch the video at the end</p> <p>Louder Than a Riot, episode 11 - Reform and Abolition</p>

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M 4/18	How bias operates; final class reflections	<ul style="list-style-type: none">• "Abacus: Small Enough to Jail": https://www.youtube.com/watch?v=hfJhW4iUcWA
4/29	<i>FINAL PAPER DUE</i>	