
JUDGES AND JUDGING (LEGAL 392JJ)
COURSE SYLLABUS
FALL 2014
TUESDAYS AND THURSDAYS 11:30-12:45
MACHMER HALL ROOM W-24

Instructor: Professor Collins

Office: Thompson Hall 328

Office Hours: 9:30-11:00 Tuesdays and Thursdays and by appointment

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OBJECTIVES

The purpose of this course is to explore the roles of judges, with a particular emphasis on judicial decision making. Because understanding what judges do entails comprehending human behavior more generally, we will approach this topic through an interdisciplinary lens. Accordingly, we will examine perspectives on judging from a variety of disciplinary approaches, including economics, gender studies, law, philosophy, political science, psychology, and sociology. Topics include judicial decision making, the selection of judges, judicial empathy, constitutional interpretation, and the role of juries. This course will provide you with a new way of thinking about the law, based on how a wide range of social science disciplines approach the craft of judging. In addition, you will learn how to understand and critique legal studies research, and hone your writing skills through the development of your own research papers.

While I will briefly cover background material in a lecture format during each class, I expect you to actively participate in the discussion that will make up the bulk of each class. Accordingly, class attendance is not optional. Rather, you should come to class with questions and critiques of the readings for each day's class. I strongly suggest you prepare notes on the readings prior to each day's class.

READINGS

There is no textbook for this class. Instead, the readings consist of journal articles and book chapters. These readings are available on this course's Moodle page (<https://moodle.umass.edu/>). On average, we will read about two journal articles/book chapters per class. A good number of the readings involve exploring the application of a general theory from a particular discipline to the craft of judging. In reading such articles, I want you to think about both the general theory and whether/how it helps us understand judicial behavior.

All readings are required and listed the day they are expected to be read in the Course Outline section. I suggest you read the required readings in the order in which they are listed and prepare notes to bring to class for discussion. If you have any questions about the readings, please contact me via email or stop by my office hours – I am here to help.

GRADES

Final grades will be computed on the following basis:

94-100% = A	80-82% = B-	66-69% = D+
90-93% = A-	76-79% = C+	60-65% = D
86-89% = B+	73-75 % = C	< 60% = F
83-85% = B	70-72% = C-	

Participation (10%)

You are expected to actively participate in class discussions. Your participation grade will not be determined by the quantity of your remarks in class, but rather their quality. Thus, come to class with the expectation of contributing positively to class discussion and being able to answer questions posed by your fellow classmates. Missing classes will negatively affect your participation grade.

Exams (Midterm – 20%; Final – 20%)

There will be two exams, a midterm and a final. Both exams are closed book. Exams will consist of some combination of multiple choice, short answer, and essay questions. The midterm exam will include all material addressed in the readings and in class up to and including October 23rd. The final will be cumulative, but will focus most heavily on the second half of the semester.

Pop Quizzes (20%)

We will have approximately one quiz per week at the *beginning* of class. The quizzes will last approximately five minutes and will be closed book/notes. The quizzes will most commonly consist of about one to five questions relating to the main points of the readings for that day's class. If you have done the reading, you will find the quizzes easy. If you are late for class or are absent, you cannot make up the quiz – you receive a zero. However, I understand that not everyone will make every class. Accordingly, the lowest two quiz grades will be dropped in calculating your final grade in the course.

Biography Paper (15%)

For your biography paper, you will author a biography of a judge suitable for publication on Wikipedia. This means that you *must* select a judge who does *not* currently have an entry on Wikipedia. You may select a current or former judge from any court in the United States, except for the United States Supreme Court. If you want to study a judge from a foreign or multinational judiciary, that is permitted, but I want to discuss this with you one-on-one during my office hours.

Your paper must be 4 or more pages in length, and it will be graded primarily on the quality of the research conducted. It will consist of 5 main parts:

- 1) Introduction: You will introduce your judge, providing information on the judge's current position and other notable facts about the judge. This section should be about a paragraph.
- 2) Early life and education: You will provide information about where the judge was born; attended college and law school; and his or her life and career prior to being a judge. If there was anything notable about the judge's experience in college or law school, this should be identified. For example: Did the judge engage in any particularly interesting extracurricular activities in college? Was the judge on his or her law school's law review? Was the judge a moot court champion? Did the judge have any clerkships while in law school or immediately thereafter? In addition, you should provide information about the judge's previous employment prior to becoming a judge and identify any notable points about his or her career or personal life prior to joining the bench. For

example: Did the judge work with any famous jurists or politicians? Did the judge hold an elective office? Was the judge fired? This section should be about a page or two.

- 3) **Judicial career:** In this section, you will discuss all judicial positions held by the judge, from the earliest to the most current. For each position, you should cover: 1) how the judge obtained the position. For example: Was the judge appointed (if so, by whom)? Was the judge elected (if so, what was the election margin and who did the judge defeat; did the judge win a political party primary; what is the judge's partisan affiliation)? Was the judge an interim appointment (if so, who made the appointment)?; 2) How long did the judge serve in each position? 3) Notable rulings: In this section, you should identify any particularly significant rulings made by the judge. Most likely, these ruling were mentioned in the media so I recommend searching newspapers for this information. This section should be about three pages.
- 4) **Award and Honors:** Were any awards or honors bestowed on the judge? If so, provide a discussion of the group who honored the judge; the name of the award; and when the judge received the award. If the judge did not receive any awards or honors, you should note this. This section should be about a paragraph.
- 5) **Publications:** If the judge authored any newspaper articles, academic articles (such as law review articles), books, book chapters, and the like, these should be listed here with a full citation to the publication. If the judge did not author any publications, you should note this. This section should be about a paragraph.

The biography paper is due in class on October 21, 2014. Because this is written in the style of a Wikipedia entry, which requires meticulous references, you will need to provide references to all of the information presented in the paper. A minimum of 5 references are required. Late papers will be penalized five points for each calendar day they are tardy. Full details on the biography paper will be distributed in class and will be made available on the course's Moodle webpage. For an example of a Wikipedia entry based on a similar (albeit not identical) format see: http://en.wikipedia.org/wiki/Sonia_Sotomayor. Although students are not required to publish their entry on Wikipedia, those that do will receive a 100% on a bonus quiz (provided they supply me with documented evidence that their page was published on or before November 25). If you choose to pursue this extra credit, please visit the following for recommendations on publishing on Wikipedia: http://en.wikipedia.org/wiki/Wikipedia:Student_assignments. Regardless of whether you publish your paper on Wikipedia, I recommend that you approach this paper as if it will be read by thousands of people.

Theory Paper (15%)

For your theory paper, you will develop a theory of judicial decision making, and discuss how it might be tested. The purpose of this paper is to apply the theories we have discussed this semester to develop a novel way of thinking about judging.

Your paper will be structured similar to the journal articles we will read this semester and must be at least 8 pages in length. It will consist of 5 main parts:

- 1) **Introduction:** You will introduce the puzzle you are trying to answer. I recommend beginning with an especially engaging opening paragraph to draw the reader in. Following this, you should provide a paragraph stating your hypothesis and explaining why it is important (i.e., what will this research tell us about judging that we already don't know?).
- 2) **Literature Review:** A literature review is a brief discussion of published research on a particular topic. The purpose of the literature review is for the writer to: 1) become familiar with work done by others on the topic under investigation; 2) evaluate the quality of that work; and 3) utilize

previous research to inform the theory under investigation. Your literature review should be brief, under three pages.

- 3) Theory: You should develop your theory in this section. This should be the heart of your paper, where you present a theoretical expectation for why judges behave the way they do. You will then use this theory to inform a specific hypothesis that can be subjected to testing.
- 4) Testing: You will explain what type of data/observations might be used to test your theory.
- 5) Conclusion: In the conclusion section, you should situate your research proposal in the broader literature on the topic you are investigating and suggesting directions for future research.

The research paper is due in class on November 25, 2014. Late papers will be penalized five points for each calendar day they are tardy. Full details on the research paper will be distributed in class and will be made available on the course's Moodle webpage.

COURSE SCHEDULE

9/2 Welcome and General Class Information

9/4 What do Judges do?

- Cardozo, Benjamin N. 1921. "Introduction." In *The Nature of the Judicial Process*. Benjamin N. Cardozo. New Haven: Yale University Press, 9-50.
- Young, Chris, Reity O'Brien, and Andrea Fuller. 2013. "Corporations, Pro-business Nonprofits Foot Bill for Judicial Seminars." *The Center for Public Integrity*. <http://www.publicintegrity.org/print/12368> (accessed August 19, 2014).

9/9 Selecting Judges

- Reddick, Malia, Michael J. Nelson, and Rachel Paine Caufield. 2010. "Examining Diversity on State Courts: How Does the Judicial Selection Environment Advance—and Inhibit—Judicial Diversity?" *American Judicature Society*. <http://oapaba.org/wp-content/uploads/2014/06/Diversity-on-the-Bench-Examining-Diversity.pdf> (accessed August 19, 2014).
- Collins, Paul M., Jr., and Lori A. Ringhand. 2013. "How It Works: The Nuts and Bolts of the Confirmation Process." In *Supreme Court Confirmation Hearings and Constitutional Change*. Paul M. Collins, Jr. and Lori A. Ringhand. New York: Cambridge University Press, 16-62.

9/11 What Should we Look for in a Judge?

- McKee, Theodore A. 2006. "Judges as Umpires." *Hofstra Law Review* 35: 1709-1724.
- Wardlaw, Kim McLane. 2009. "Umpires, Empathy, and Activism: Lessons from Judge Cardozo." *Notre Dame Law Review* 85: 1629-1662.
- Smolowe, Jill. 1991. "Sex, Lies and Politics: He Said, She Said." *Time*, October 21.

9/16 Judicial Retirements and Recusals

- Memorandum of Justice Scalia, *Cheney v. U.S. District Court for the District of Columbia*, 541 U.S. 913 (2004).
- Brenner, Saul. 1999. "The Myth That Justices Strategically Retire." *Social Science Journal* 36: 431-439.

9/18 Guest Speaker: Judge Bill Ramsey, Chief Administrative Law Judge, Social Security Administration Office of Disability Adjudication and Review, Boston

- Yoder, Ronnie A. 2002. "The Role of the Administrative Law Judge." *Journal of the National Association of Administrative Law Judges* 22: 321-348.

9/23 Originalism

- Scalia, Antonin. 1989. "Originalism: The Lesser Evil." *University of Cincinnati Law Review* 57: 849-865.
- Balkin, Jack M. 2014. "Why Are Americans Originalist?" To appear in *Law, Society, and Community: Socio-Legal Essays in Honour of Roger Cotterrell*. David Schiff and Richard Nobles, eds. Farnham: Ashgate Publishing.

9/25 Precedent

- Schauer, Frederick. 1987. "Precedent." *Stanford Law Review* 39: 571-605.
- Segal, Jeffrey A., and Harold J. Spaeth. 1996. "The Influence of Stare Decisis on the Votes of United States Supreme Court Justices." *American Journal of Political Science* 40: 971-1003.

9/30 Attitudes and Values

- Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press, pages 86-97, 312-326.
- Gillman, Howard. 2001. "What's Law Got to Do with It? Judicial Behavioralists Test the 'Legal Model' of Judicial Decision Making." *Law & Social Inquiry* 26: 465-504.

10/2 Judicial Strategy

- Epstein, Lee, and Jack Knight. 1998. "A Strategic Account of Judicial Decisions." In *The Choices Justices Make*. Lee Epstein and Jack Knight. Washington, DC: CQ Press, 1-21.
- Bowie, Jennifer Barnes, and Donald R. Songer. 2009. "Assessing the Applicability of Strategic Theory to Explain Decision Making on the Courts of Appeals." *Political Research Quarterly* 62: 393-407.

10/7 Law and Economics

- Posner, Richard A. 1993. "What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does)." *Supreme Court Economic Review* 3: 1-41.
- Wald, Patricia M. 1988. "Limits on the Use of Economic Analysis in Judicial Decision Making." *Law and Contemporary Problems* 50: 225-244.

10/9 Regime Politics

- Dahl, Robert A. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law* 6: 279-295.
- Whittington, Keith E. 2005. "Interpose Your Friendly Hand?: Political Supports for the Exercise of Judicial Review by the United States Supreme Court." *American Political Science Review* 99: 583-596.

10/14 No Class – Monday class schedule to be followed (so go to your Monday classes)

10/16 No Class – Independent Research Day

10/21 Review for Midterm Examination/Biography Papers Due

We will use this class as an opportunity to discuss what we have covered during the first half of the semester as a means of preparing for the midterm exam. I will also be happy to field questions on the material we have covered during this class period.

10/23 Midterm Examination

10/28 Guest Speaker: Judge Judd Carhart, Associate Justice, Massachusetts Appeals Court

- Hopkins, James D. 1975. "The Role of an Intermediate Appellate Court." *Brooklyn Law Review* 41: 459-478.

10/30 Small Group Theory

- Snyder, Eloise C. 1958. "The Supreme Court as a Small Group." *Social Forces* 36: 232-238.
- Collins, Paul M., Jr., and Wendy L. Martinek. 2011. "The Small Group Context: Designated District Court Judges in the U.S. Courts of Appeals." *Journal of Empirical Legal Studies* 8: 177-205.

11/4 Gender and Judging: Critical Mass Theory

- Dahlerup, Drude. 2006. "The Story of the Theory of Critical Mass." *Politics & Gender* 4: 511-522.
- Collins, Paul M., Jr., Kenneth L. Manning, and Robert A. Carp. 2010. "Gender, Critical Mass, and Judicial Decision Making." *Law & Policy* 32(2): 260-281.

11/6 **Judges and Audiences**

- Baum, Lawrence. 2006. "Judging as Self-Presentation." In *Judges and Their Audiences: A Perspective on Judicial Behavior*. Lawrence Baum. Princeton: Princeton University Press, 25-49.
- Garoupa, Nuno, and Tom Ginsburg. 2008. "Judicial Audiences and Reputation: Perspectives from Comparative Law." *Columbia Journal of Transnational Law* 47: 451-490.

11/12 **Motivated Reasoning**

Note: This is a Wednesday class meeting on Tuesday's course schedule

- Kunda, Ziva. 1990. "The Case for Motivated Reasoning." *Psychological Bulletin* 108: 480-498.
- Bramen, Eileen and Thomas E. Nelson. 2007. "Mechanism of Motivated Reasoning? Analogical Perception in Discrimination Disputes." *American Journal of Political Science* 51: 1021-1044.

11/13 **Cognitive Styles and Judging I**

- Jost, John T., Jack Glaser, Arie W. Kruglanski, and Frank J. Sulloway. 2003. "Political Conservatism as Motivated Social Cognition." *Psychological Bulletin* 129: 339-375.
- Tetlock, Philip E., Jane Bernzweig, and Jack L. Gallant. 1985. "Supreme Court Decision Making: Cognitive Style as a Predictor of Ideological Consistency of Voting." *Journal of Personality and Social Psychology* 48: 1227-1239.

11/18 **Cognitive Styles and Judging II**

- Guthrie, Chris, Jeffrey J. Rachlinski, and Andrew J. Wistrich. 2001. "Inside the Judicial Mind." *Cornell Law Review* 777-830.
- Holt, Jim. 2011. "Two Brains Running," *New York Times*, November 25.

11/20 **Cognitive Dissonance**

- Festinger, Leon, and James M. Carlsmith. 1959. "Cognitive Consequences of Forced Compliance." *Journal of Abnormal and Social Psychology* 58: 203-211.
- Collins, Paul M., Jr. 2011. "Cognitive Dissonance on the U.S. Supreme Court." *Political Research Quarterly* 64: 362-376.

11/25 **Persuading Judges**

- Wasby, Stephen L., Anthony A. D'Amato, and Rosemary Metrailer. 1976. "The Functions of Oral Argument in the U.S. Supreme Court." *Quarterly Journal of Speech* 62: 410-422.
- Collins, Paul M., Jr., Pamela C. Corley and Jesse Hamner. 2013. "The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content." Presented at the Annual Meeting of the American Political Science Association, Chicago, Illinois.

12/2 **Juries**

- Ryan, Meghan J. 2014. "Juries and the Criminal Constitution." *Alabama Law Review* 65: 849-902.

12/4 **Catchup and Review for Final Exam**

We will use this class as an opportunity to discuss what we have covered during this course as a means of preparing for the final exam. I will also be happy to field questions on the material we have covered during this class period.

12/11 **Final Exam: 10:30AM-12:30PM in the classroom**

MISCELLANEOUS INFORMATION

Grade Disputes: A great deal of time is invested in grading student assignments. If a student wishes to dispute a grade, he or she must do so in writing. Students must articulate a clear explanation as to why they feel a different grade is in order, as well as what grade they believe to be more representative of their work. Merely "wanting" or "needing" a higher grade is not a sufficient reason. Students should also note that if work is reviewed for a grade dispute, the entire work is reviewed, not simply the specific aspect being disputed by the student. All grade disputes are due in writing to the Professor within ten calendar days after the grade is posted on the course's Moodle webpage. Grade disputes will not be considered if submitted past the ten calendar day statute of limitations. Note that the Family Educational Rights and Privacy Act (FERPA) prohibits the Professor from discussing grades via email or telephone. Accordingly, grade disputes should be handled during office hours.

Make Up Policies: Each student is expected to complete all assignments by the due date and take all examinations at the scheduled times. Make up exams will be permitted only under the gravest of circumstances. As a general rule, make up exams will not be offered. Failure to appear for a scheduled exam without prior notification and an acceptable reason will result in a score of zero (0) for that exam. Students should be aware that the makeup exam, if allowed, may not be the same as the original examination. While the material to be tested will stay the same, the exact questions and format may differ. There are no opportunities to make up missed pop quizzes.

Academic Honesty: Academic dishonesty will not be tolerated in this class. Incidents of academic dishonesty will result in a failing grade for the class and further penalties per the University's judicial process. Students are advised to review the policies established by UMass regarding academic integrity (<http://www.umass.edu/ombuds/honesty.php/>). If you have any questions about what constitutes plagiarism or cheating, see the Professor. Finally, students agree that, by taking this course, all required assignments may be subject to submission for textual similarity review to www.turnitin.com or a similar plagiarism prevention system.

Students with Disabilities: I am committed to making reasonable, effective, and appropriate accommodations to meet the needs of any student with disabilities to help create a barrier free campus. If you are registered with Disability Services, please provide me with the proper paperwork and come and talk to me as soon as possible (preferably before the second week of classes).

Stipulation: I reserve the right to change this syllabus as I see fit at any point in the semester.