
LEGAL 394JI: JUDGES AND JUDGING (INTEGRATIVE EXPERIENCE)
COURSE SYLLABUS
FALL 2018
TUESDAYS AND THURSDAYS 8:30AM-9:45AM
MACHMER HALL ROOM W-11

Instructor: Professor Collins

Office: Thompson Hall 328

Office Hours: 10:00-11:30 Tuesdays and Thursday and by appointment

E-mail: pmcollins@legal.umass.edu

Credits: 4

OBJECTIVES

The purpose of this upper-division integrative experience (IE) 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 bias in judging. 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.

By fulfilling the integrative experience requirement, this course is designed to enhance students' ability to:

- reflect on and integrate their learning and experience from General Education courses and their major
- practice General Education learning objectives such as oral communication, collaboration, critical thinking, and interdisciplinary perspective-taking
- engage in shared learning experiences for applying their prior knowledge to new situations, challenging questions, and real-world problems

This course will accomplish this in a number of ways. First, this course is interdisciplinary in nature, engaging a wide variety of disciplines to critically investigate the work of judges. This will require students to draw on an array of experiences throughout their careers at UMass. Second, this course features a writing assignment that calls for students to author a reflective essay exploring the role of General Education coursework in helping to understand the appointment of Judge Brett Kavanaugh to the U.S. Supreme Court. Finally, students will work in groups throughout the semester as they tackle real-world problems faced by judges working in small group environments.

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,

and be prepared to answer questions from the instructor and your classmates. 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 the instructor and your fellow classmates. Missing classes will negatively affect your participation grade. If you are very uncomfortable speaking in front of the class, please discuss this with me. We may be able to come to an arrangement in which you submit questions and comments to me via email before class. This portion of the class is consistent with the integrative experience objectives of practicing oral communication, critical thinking, and interdisciplinary perspective-taking.

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 16th. The final will be cumulative, but will focus most heavily on the second half of the semester. This portion of the class is consistent with the integrative experience objectives of practicing critical thinking and interdisciplinary perspective-taking.

Pop Quizzes (10%)

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. This portion of the class is consistent with the integrative experience objectives of practicing critical thinking and interdisciplinary perspective-taking.

Self-Reflection Essays (5%)

For the self-reflection essays, students will write two, two-page reflective pieces. The first essay is due at the beginning of the semester on September 13th. This essay calls for students to address how their General Education courses inform their opinion as to whether Judge Brett Kavanaugh should be confirmed to the United States Supreme Court. The purpose of this assignment is for students to critically analyze how their General Education courses shape their understanding of Kavanaugh's appointment and confirmation. For example, students who choose to write about the connection of social and cultural diversity to judging will have the opportunity to reflect critically on the relationship between General Education courses in these fields, such as discussing whether Kavanaugh's appointment contributes to social and cultural diversity on the Court. The second essay is due toward the end of the semester on November 13th. This essay calls for students to reflect on how their understanding of Kavanaugh's appointment and confirmation has changed as a result of exposure to the coursework featured in this class. Full details on the self-reflection essays will be discussed in class and will be made available on the course's Moodle webpage. This portion of the class is consistent with the integrative experience objective of reflecting on and integrating their learning and experience from General Education courses and their major.

Participation in Shared Learning (10%)

Throughout the semester, students will participate in shared learning experiences by working in small groups. These experiences will allow students to address real-world problems faced by judges on a variety of topics. In addition, groups will present their solutions to the question prompts to the entire class, thus improving their oral communication skills. Students will be evaluated based on their written solutions to the question prompts (pass/fail). The shared learning experiences will take place in class on September 25th, October 16th, November 11th, and November 29th. Each shared learning experience will contribute 2.5% to the student's final grade in the course. Failure to participate in the in-class shared learning experience will result in a score of zero (0) for that assignment. There will be no opportunities to make up missed in-class shared learning experiences. This portion of the class is consistent with the integrative experience objectives of practicing oral communication and engaging in a shared learning experience for applying their prior knowledge to new situations, challenging questions, and real-world problems.

Biography Paper (10%)

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 or Judge Carhart of the Massachusetts Appeals Court (retired). 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. Only one judge will be assigned per student (on a first-come, first-served basis) so it is recommended that you notify Professor Collins of the judge you have selected to write about as soon as possible, but no later than September 27th. *I strongly encourage you to do some research before selecting a judge to ensure you will be able to meet all of the requirements of the paper.*

Your paper must be four or more full pages in length, and it will be graded primarily on the quality of the research conducted. It will consist of five 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 local 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 4th. 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 five 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 December 11th). 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 (but you do not need to collect data or test your theory). 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 seven full pages in length. It will consist of five 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.

Students must submit a one-paragraph summary of the theory they plan to focus on and at least four relevant references on November 1st. The research paper is due in class on December 6th. 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. This portion of the class is consistent with the integrative experience objectives of practicing critical thinking and interdisciplinary perspective-taking.

COURSE SCHEDULE

9/4 Welcome and General Class Information

9/6 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.
- Montanaro, Domenico. 2018. "Who Is Brett Kavanaugh, President Trump's Pick For The Supreme Court?" NPR. <https://www.npr.org/2018/07/09/626164904/who-is-brett-kavanaugh-president-trumps-pick-for-the-supreme-court> (accessed August 17, 2018).

9/11 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 January 18, 2017).

- 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.

9/13 **What Should We Look for in a Judge?**

Self-Reflection Essay #1 Due

- 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.

9/18 **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.

9/20 **Law Clerks**

- Rehnquist, William. [1957]. 2008. "Who Writes Decisions of the Supreme Court?" *U.S. News and World Report*, December 9.
- Ward, Artemus. 2009. "Sorcerers' Apprentices: U.S. Supreme Court Law Clerks." In *Exploring Judicial Politics*, ed. Mark C. Miller. New York: Oxford University Press, 152-173.

9/25 **Originalism**

We will have a shared learning experience during this class.

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

9/27 **Precedent**

Last day to inform Professor Collins of the judge for your biography paper

- 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.

10/2 Attitudes and Values I

- 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.

10/4 Attitudes and Values II

Biography Papers Due

- Epstein, Lee, Andrew D. Martin, Kevin Quinn, and Jeffrey A. Segal. 2012. "Ideology and the Study of Judicial Behavior." In *Ideology, Psychology, and Law*, ed. Jon Hanson. Oxford University Press, 705-728.

10/11 Judicial Strategy I

- 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.

10/16 Judicial Strategy II

We will have a shared learning experience during this class.

- Epstein, Lee, and Jack Knight. 2013. "Reconsidering Judicial Preferences." *Annual Review of Political Science* 16: 11-31.

10/18 No Class – Office Hours Cancelled (I will hold special office hours from 10-12 on Friday, 10/19)

Please use the class time to prepare for the midterm exam. For example, if you have questions about the material on the exam, please email me and I will be happy to answer them.

10/23 Midterm Examination

10/25 Guest Speaker: Judge Judd Carhart, Associate Justice (retired), Massachusetts Appeals Court

- Songer, Donald R., and Susan B. Haire. 2017. "Access to Intermediate Appellate Courts." In *The Oxford Handbook of U.S. Judicial Behavior*, ed. Lee Epstein and Stefanie A. Lindquist. New York: Oxford University Press.

10/30 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.

11/1 Small Group Theory

One-paragraph summaries of theory papers and four references due.

We will have a shared learning experience during this class.

- Snyder, Eloise C. 1958. "The Supreme Court as a Small Group." *Social Forces* 36: 232-238.
- Martinek, Wendy L. 2010. "Judges as Members of Small Groups." In *The Psychology of Judicial Decision Making*, ed. David Klein and Gregory Mitchell. New York: Oxford University Press.

11/6 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.

11/8 Race and Judging

- Boyd, Christina L. 2016. "Representation on the Courts? The Effects of Trial Judges' Sex and Race." *Political Research Quarterly* 69(4): 788-799.
- Bennett, Mark W. 2017. "The Implicit Racial Bias in Sentencing: The Next Frontier." *The Yale Law Journal Forum* 126: 391-405.

11/13 Judges and Audiences

Self-Reflection Essay #2 Due

- 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.

11/15 **Motivated Reasoning**

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

11/27 **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.

11/29 **Cognitive Styles and Judging II**

We will have a shared learning experience during this class.

- 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.

12/4 **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.

12/6 **Persuading Judges**

Theory Paper Due

- Wasby, Stephen L., Anthony A. D'Amato, and Rosemary Metrailler. 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. 2015. "The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content." *Law & Society Review* 49(4): 917-944.

12/11 **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.

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. According to UMass, legitimate absences include cases of verifiable illness (doctor’s note required), a death in the immediate family, jury duty, military service, and religious holidays. 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 or shared learning experiences.

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/honesty/>). 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.