Course Description

The “third” or judicial branch of federal and state government often takes a back seat to studies of the executive and legislative branches. This course seeks to correct for that imbalance by focusing on what judges actually do and how courts actually operate. By exploring the judiciary and the courts, we will also see how law, politics, economics, and social trends combine to shape the legal system. We will examine what judges actually do; how judges are selected (including the merits of different selection processes); how judges’ backgrounds and views may influence their work and decisions; the moral, emotional, ethical, and intellectual aspects of deciding cases and of being a judge; the very substantial differences between different kinds of judges in different courts and administrative settings; and how judging fits into the broader structure and operation of the courts. A special feature of this course will be a series of guest lectures and dialogue with current and former judges and judicial clerks.

Learning Outcomes/Assessment Goals

My hope and expectation is that, by taking this course, students should:

- Understand the role and responsibilities of the federal and state judiciaries, and how they interact with other branches of government

- Understand how the federal and state judiciaries are organized and staffed, with a particular appreciation of the advantages and disadvantages of different mechanisms for selecting judges, affording them the independence needed to do their jobs well, and holding them accountable

- Develop a subtle appreciation of the ethical, moral, emotional, intellectual, and political pressures and quandaries judges must confront

- Understand the unsettled and sometimes contradictory nature of legal argumentation and adjudication (in common parlance, to grasp that “The Law’s favorite color is gray”).

This course is also meant to give students a good perspective on what law school/legal practice entails, thereby helping them gauge their level of interest in a legal career.
Finally, through this course I want students to acquire a continuing interest in/commitment to their responsibilities as citizens and/or participants in our legal system.

Six (6) credits

This course can be applied to satisfy the Social Inquiry graduation requirement.

Course Materials

We will be reading large portions of the following books:


I have just been informed that the College bookstore is having difficulty locating sufficient copies of Baum text, and that as a result it is expensive to purchase. Accordingly, while you should feel free to purchase a used copy online from Amazon.com or through other sources, I will also put selected portions of the book on the Moodle site for this course


The latter two books are available at the College bookstore or online.

While not a required text, students may also find it useful to acquire a pocket copy of the United States Constitution for handy reference. Such a document can be acquired through many online sources or simply printed out, see, e.g.: [https://nccs.net/products/pocket-constitution-of-united-states](https://nccs.net/products/pocket-constitution-of-united-states)

Additional readings will also be assigned and posted on the course’s Moodle site.

Course Requirements

Papers

Students will be asked to write three 5-6 page papers over the course of the term. These papers should be based both on the assigned readings for the course and modest additional outside research carried out by students.

- The first paper, on the topic of “What is the best process for selecting judges?” is due by 6:00 p.m. on April 19.
- The second paper, on the topic of “Should politics influence judging?” is due by 6:00 p.m. on May 10.
- The third paper, on the topic of “Lessons learned for guest judicial lecturers” is due by 6:00 p.m. on May 27.
Class Participation

You are also expected to participate in class discussions and, on occasion, to post after-class reflections on the course’s Moodle site. (See the discussion on Preparation for Class, Attendance and Class Participation below). You will receive a grade for class participation that will figure into your final grade.

Course Outline and Reading Assignments

While this syllabus presents an estimated, session-by-session, schedule of where we should be, this is likely to vary a bit, depending on how fast we’re moving. I shall try to keep everyone regularly apprised of where we are on the syllabus. But I also want to ensure that we spend sufficient time on each part of the course so that you understand the concepts and we can explore the issues adequately before we move on to the next unit. If you miss class, please contact a fellow student or me to learn at what point on the syllabus we ended and the topics we will be covering in the next class. It is always a good idea to read ahead if you can, since the reading for some units will be more voluminous than for others.

A note about the readings: On occasion, will be reading judicial opinions and using what is commonly known as the “case method” in our learning. This approach will enable you to appreciate and to grow in comfort with how lawyers and judges reason and write. Distilling the principal holdings and meaning of a judicial opinion is an acquired skill (indeed, it’s a critical aim of the first year of law school!), but I assure you that you can develop this ability even in our undergraduate-level class. You do not need to understand—much less master!—every jurisdictional or procedural point made in the opinion, all the references made to other cases, or analytic frameworks that we have not discussed in class.

Week 1

March 25 (Class 1)

Introductions/Housekeeping Matters

Goals of the Course

What Courts Are and What They Do

Readings:

- Baum, Chapter 1 pp. 1-18
- Friedman *et al.*, “Case-Based Lawmaking,” in *Judicial Decision-Making*, pp. 200-206

Suggested Additional Readings:
Landsman, Chapter I “Introduction to the Adversary System,” in Readings on Adversarial Justice: The American Approach to Adjudication, pp. 5-33, 36-39

March 27 (Class 2)
**State and Federal Court Organization**

Readings:

Baum, Chapter 2 pp. 19-51

March 29 (Class 3)
**Civil Trial Courts**

Readings:

Baum, Chapter 7 pp. 201-238

*Week 2*

April 1 (Class 4)
**Criminal Trial Courts**

Readings:

Baum, Chapter 6 pp. 150-194

April 3 (Class 5)

**Guest Judicial Lecturer:** Hon. Bruce Manning
Minnesota State Judge
Fourth Judicial District—Hennepin County
Trial-level Court (Juvenile)

Readings:

**To Be Assigned**

April 5 (Class 6)

**Appellate Courts**

Readings

Baum, Chapter 8 pp. 245-283

*Week 3*
April 8 (Class 7)

Who Judges Are/How Judges are Selected

Readings:

Baum, Chapter 5 pp. 123-136

Baum, Chapter 4 pp. 92-119


April 10 (Class 8)

How Judges are Selected

Readings:

Baum, Chapter 5 pp. 123-136

Baum, Chapter 4 pp. 92-119


April 12 (Class 9)

Guest Judicial Lecturer: Robert N. Hochman
Partner and co-leader, Supreme Court and Appellate Practice
Sidley Austin LLP
Court of Appeals Clerk (Judge Posner)
Supreme Court Clerk (Justice Breyer)
Readings:

Posner, Chapter 10 pp. 269-281

To Be Assigned

Week 4

April 15 (Class 10)

What Judges Do

Readings:


Posner, Introduction, pp. 1-15

Posner, Chapter 1, pp. 19-56

April 17 (Class 11)

Guest Judicial Lecturer: Hon. Elizabeth (Libby) Liebschutz  
Chief Administrative Law Judge (retired)  
New York State Department of Public Service (staff arm of NY Public Service Commission)

Readings:

To Be Assigned

April 19 (Class 12)

What Judges Do

Readings:

Posner, Chapter 3, pp. 78-92

Posner, Chapter 4, pp. 93-121

Posner, Chapter 7, pp. 191-203


Friday April 19 PAPER #1 DUE on “What is the best process for selecting judges?”

Week 5
April 22 (Class 13)

What Judges Do

Readings:

Posner, Chapter 9, pp. 230-265

Posner, Conclusion, pp. 369-377

April 24 (Class 14)

External Constraints on Judging

Readings:

Posner, Chapter 5, pp. 125-157

April 26 (Class 15)

Guest Judicial Lecturer: Hon. Larnzell Martin
Maryland State Judge
Prince George’s County Circuit Court, 7th Judicial Circuit
(1990-2013; Chief Judge 2013-2016; Presiding Judge, Family
Division, 1998; Senior Judge since 2016)
Trial-level Court (Family)

Readings:

To Be Assigned

Week 6

April 29

MIDTERM BREAK—No Class

May 1 (Class 16)

Guest Judicial Lecturer: Hon. David L. Lillehaug
Minnesota Supreme Court (2013-2020)

Readings:

To Be Assigned

May 3 (Class 17)
Politics and Judging

Readings:

Tamanaha, Chapter 10 in *Beyond the Formalist-Realist Divide*

Note on “Early Political Struggles over the Federal Judiciary,” in Brest *et al.*, *Processes of Constitutional Decisionmaking*


Friedman *et al.*, “What We Know” (about the effects of race and sex on judging), in *Judicial Decision-Making*, pp. 173-180

Vladeck, “Why the Fifth Circuit Keeps Making Such Outlandish Decisions,” *The Atlantic*


Suggested Additional Readings:

Minda, “Origins of Modern Jurisprudence” and “Modern Conceptual Jurisprudence” in *Postmodern Legal Movements*

**Week 7**

May 6 (Class 18)

Politics and Judging

Readings:

Tamanaha, Chapter 10 in *Beyond the Formalist-Realist Divide*

Note on “Early Political Struggles over the Federal Judiciary,” in Brest *et al.*, *Processes of Constitutional Decisionmaking*

Friedman et al., “What We Know” (about the effects of race and sex on judging), in Judicial Decision-Making, pp. 173-180

Vladeck, “Why the Fifth Circuit Keeps Making Such Outlandish Decisions,” The Atlantic


Suggested Additional Readings:

Minda, “Origins of Modern Jurisprudence” and “Modern Conceptual Jurisprudence” in Postmodern Legal Movements

May 8 (Class 19)

**Holding Judges Accountable**

Readings:

Baum, Chapter 5, pp. 136-146

May 10 (Class 20)

**Judicial Ethics**

Readings:


Code of Conduct for United States Judges

Code of Conduct for Justices of the Supreme Court of the United States

Friday May 10 PAPER #1 DUE on “Should politics influence judging?”

**Week 8**

May 13 (Class 21)
Judicial Ethics

Readings:


Code of Conduct for United States Judges

Code of Conduct for Justices of the Supreme Court of the United States

May 15 (Class 22)

Personal Hazards/Burdens of Judging

Readings:

Canan, Mize, and Weisberg, *Tough Cases*


May 17 (Class 23)

Personal Hazards/Burdens of Judging

Readings:

Canan, Mize, and Weisberg, *Tough Cases*


Week 9

May 20 (Class 24)

Personal Hazards/Burdens of Judging

Readings:

Canan, Mize, and Weisberg, *Tough Cases*


May 22 (Class 25)
Guest Judicial Lecturer: Hon. Edward T. Wahl  
Hennepin County  
Minnesota State Judge  
Fourth Judicial District—Hennepin County  
Trial-level Court (Civil and Criminal)

Readings:

To Be Assigned

May 24 (Class 26)

Improving Judging and the Judiciary

Readings:


Week 10

May 27 (Class 27)

Catch-up

Monday May 27 PAPER #3 DUE on “Lessons learned from guest judicial lecturers”

May 29 (Class 28)

Review and Conclusion

Preparation for Class, Attendance, and Class Participation

We will be meeting face-to-face, although there may an occasion when (due to prior commitments I have) we will need to meet by Zoom or I will record a lecture in advance for you to watch.

The readings for the course are typically around one hundred pages per week, and of course I expect you to have done the relevant reading before each session. Some of the readings are judicial opinions that illustrate how judges apply the law to specific disputes—and sometimes create new law. Reading such opinions is something of an acquired skill, because of the formal language and structure used by judges and the reliance upon precedent in crafting a decision, but you will get the hang of it quickly (really!) To that end, I will introduce you to basic legal terminology and concepts as they come up, and to the mechanics and impact of legal reasoning.

I believe that lasting learning is best attained through joint discussion and deliberation, with teachers and students as active partners in intellectual dialogue. Our class sessions are designed to help build upon and confirm your understanding not just of the assigned material but of the underlying issues and themes. Therefore, your attendance and participation are important. I will assume from your presence that you are benefiting and learning from the
course. Conversely, I will infer from your absence that you are not. Of course, I understand that sometimes emergencies or other unexpected circumstances (including medical circumstances such as COVID) arise that make attendance on a given day impossible. If this is the case, please talk with me as soon as possible so we can make arrangements to get you caught up. However, if you accumulate more than two unexcused absences, I will deduct from your course average.

While I will periodically offer a brief mini-lecture to explicate a particularly complicated or unfamiliar topic, much of our class will be a free-wheeling debate and discussion, led and facilitated by me. While I will expect people to participate voluntarily, I will also call upon students by name. Be ready to participate. Your comments, questions, observations and critique of the readings (and of my and others’ arguments) will make this a richer learning experience for us all.

To that end, during the first session of the class I will break us into three sub-groups, each of which will be charged will helping us reflect upon the discussions. Starting with Week 1 of the term, and continuing through Week 9, at the end of each week each of the members of a designated sub-group will be asked, on three occasions:

To post on the course’s Moodle site, at least 24 hours before the next session, a short reflection/analysis piece (e.g., one page or 300-400 words) of the idea(s) discussed in our class sessions that week that you find most compelling, provocative, or worthy of further examination—and why you feel that way.

Because these post-class reflections will be of value to all participants, everyone should read them.

Further Background and Ground Rules for Discourse

As you’ll quickly discover from our discussions and the readings, while many people perceive “the law” as providing (or wish for it to provide) clarity and certainty in the rules that govern society and in the adjudication of the disputes that inevitably arise, there is often more “gray” than black/white in law. This means that there is lots of room for debate and disagreement on what the current law is and what the proper role for judges and courts should be.

A most valuable skill required in legal analysis is seeing how the sides of an argument (and often there are more than two sides!) can be laid out in the cleanest and most powerful of terms. This is also something we’ll work on together.

Let me also lay out a few “ground rules” for our discourse in class:

- Our class must be marked by mutual respect for and civility towards each other. Everyone should feel included and able to express their views thoughtfully.

- We’ll be reading about and debating intense and divisive issues that go to the heart of American democracy and how it is functioning. Accordingly, academic freedom and First Amendment freedom of expression (which are not the same thing!) will be linchpins of our work together. I support both of those values in their proper context,
and expect you to do the same. This means we must be willing to consider the substantive merits of seriously-offered ideas with which we disagree (or even which offend our sensibilities).

- Substantive arguments about the law are to be expected, but they must never turn into personal attacks. If someone (and this includes me!) says something in class that offends you personally, I would ask that you take it up politely and honestly with that individual later.

- Because I want our classroom to be both an intellectually challenging and a supportive place, I will endeavor to alert students to topics or readings that I know may be wrenching to address. In turn, you should feel free to advise me privately if you cannot engage as you ordinarily would with regard to any particular topic.

- I will always endeavor to address everyone by their preferred name and pronouns (though it may take me a bit of time to memorize them all!) Because I do not want to subject anyone to public scrutiny on this matter, please let me know privately (email is fine) if you have a particular way you would like to be addressed.

We will also have an opportunity during the first week of class to discuss collectively whether there are further ground rules for discourse that we’ll want to observe.

**Grading**

I will compute your grade from a course average with the following weights:

- Paper #1 25%
- Paper #2 25%
- Paper #3 25%
- General Class Participation (including Moodle posts and especially in class-contributions) 25%

All written assignments are due on the due date, as confirmed in class by the instructor.

- Late assignments will be penalized.
- Missed assignments will receive a grade of zero (0)

However, I do understand that sometimes emergencies or other unexpected circumstances arise that make meeting a deadline impossible. If this is the case, please talk with me as soon as possible so we can make appropriate arrangements.

**Academic Integrity**

In an academic community, cheating and plagiarism are “capital offenses” that are the most serious violations of our shared standards and expectations. Academe relies upon the ethical conduct of scholars, who are expected always to give proper credit to the ideas of others that they rely upon/build upon. Students are held to the same standards in their own work. Any act
of academic dishonesty or misconduct will be referred to the Academic Standing Committee. For further information, see: https://apps.carleton.edu/handbook/academics/?policy_id=21359

**Accessibility**

I want everyone in the class to be able to learn effectively. To that end, Carleton is committed to providing reasonable accommodations to students with disabilities. Students seeking accommodations should contact the Coordinator of Disability Services at (507) 222-4464 to begin the process.

Other resources that may be of value and aid to students include the College’s Academic Support center (https://www.carleton.edu/asc/) and Writing Center (https://www.carleton.edu/writing-center/).

**Artificial Intelligence**

The use of ChatGPT or other AI tools to prepare written assignments for this class is prohibited.

**Observance of Religious Holidays**

I will seek to accommodate or make alternative arrangements for students who need to come late to class, who need to be absent from class, or who need to submit an assignment late in order to observe a religious holiday. I would ask that you let me know in advance if you are experiencing such a conflict, so that I can work with you to find an appropriate and fair accommodation. You can find further information about the College’s policy on religious holidays at: https://www.carleton.edu/chaplain/religious-observances/.

**Contacting the Instructor:**

I can be reached at:

Office: 303 Hasenstab Hall
Office hours: Tuesdays/Thursdays 1-2:00 pm, and by appointment, as needed
Phone: (507) 222-4563
Fax: (507) 222-5615
Email: sposkanzer@carleton.edu (This is probably the fastest way to reach me)

I would ask each of you to come to office hours at least once, so I can get to learn more about you, your motivations for taking the course, and your longer-term aspirations.