
PICKING A U.S. SUPREME COURT JUSTICE (FFYS 197LEG1)
COURSE SYLLABUS
FALL 2016
TUESDAYS 10:00-10:50AM
HASBROUCK LAB ADD ROOM 104B

Instructor: Professor Collins

Office: Thompson Hall 328

Office Hours: 12:30-2:00 Tuesdays and Thursdays and by appointment

E-mail: pmcollins@legal.umass.edu

COURSE OVERVIEW

This first year seminar is an opportunity for students to engage with a faculty member and fellow students in an exploration of the process of selecting a U.S. Supreme Court justice in a small, low stress environment. To do this, the course will provide an overview of the process of nominating and confirming a Supreme Court justice, using the vacancy created by the death of Justice Scalia as a case study. Students will consider the normative implications of selecting a judge who is granted life tenure and what qualities we should look for in a judge. We will also delve into the confirmation process, including selection by the president, hearings in the Senate Judiciary Committee, the role of interest groups, and confirmation in the Senate.

In addition to the thematic focus of the course, we will also discuss topics that will help you on your transition to college. To do this, we will begin many class periods with a discussion of some of the challenges that college students face. Topics include interacting with professors, choosing a major, making connections with diverse groups of people at the University, developing an interest in new subjects, and learning to think in new ways. I would like to spend about 10 minutes at the beginning of many classes discussing these topics as a group.

READINGS

Students are required to have access to the following book:

Collins, Paul M., Jr., and Lori A. Ringhand. 2013. *Supreme Court Confirmation Hearings and Constitutional Change*. New York, NY: Cambridge University Press. (hereafter Collins and Ringhand)

In addition to the book, I have posted readings on this course's Moodle page (<https://moodle.umass.edu/>).

All readings are required and listed the day they are expected to be read in the Course Schedule section. I recommend bringing the readings to class with you. 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

This is a pass/fail course. Grades will be based on attendance, participation in class discussions, and a short paper assignment.

Attendance: Students are expected to attend all class sessions. More than four unexcused absences will result in failure in the course. 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.

Participation: 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 Professor and your fellow classmates. Discussion questions appear in the Course Schedule section under the readings. You should be prepared to answer these questions at each class. In order to earn a passing participation grade, students are expected to make positive contributions to class discussions at least once per two classes.

Short Paper: Each student will write one short paper (a minimum of three full, double-spaced pages of text) that presents the case for the nomination and confirmation of a specific Supreme Court associate justice (other than Merrick Garland). In writing the paper, you are to assume that the vacancy created by Justice Scalia's death is still open as of February 2016 and you are the newly inaugurated president. Students will select one of the following scenarios:

1. You are a Democratic President and the Senate is controlled by Republicans by a 52-48 majority
2. You are a Democratic President and the Senate is controlled by Democrats by a 52-48 majority
3. You are a Republican President and the Senate is controlled by Republicans by a 52-48 majority
4. You are a Republican President and the Senate is controlled by Democrats by a 52-48 majority

The paper will proceed in three parts. First, students will indicate which scenario they chose and how this setting has influenced their choice of nominee. Second, students will identify a specific individual that they have selected to nominate to the Supreme Court. Finally, students will make the case for the individual by explaining their qualifications, temperament, likely ideology, and any other factors that may be relevant for making the case that your nominee should be confirmed. The paper is due on **December 6** (the second to last class of the semester). Failure to turn in the short paper will result in a failing grade for the course.

COURSE SCHEDULE

Note: The readings are listed the day they are expected to be read. For example, before class on September 13th, you should have read the chapter on the U.S. Supreme Court authored by Corley, Ward, and Martinek.

9/6 **Welcome and General Course Information**

- Reading: Jenkins, Rob. 2016. "Defining the Relationship," *Chronicle of Higher Education*, <http://chronicle.com/article/Defining-the-Relationship/237388/> (accessed August 10, 2016). I will provide a handout of this article in class.
- Discussion Questions: What do you think of the tone of Jenkin's article (Too harsh? Just right?)? What is the appropriate relationship between students and professors in general and in specific scenarios, such as on social media? What do you think of the pledge and expectations Jenkins outlines on page 6? More generally, what have you always wanted to ask a college professor?

9/13 **What's at Stake: The Role of the Supreme Court in American Democracy**

- Reading: Corley, Pamela C., Artemus Ward, and Wendy L. Martinek. 2016. "The U.S. Supreme Court." In *American Judicial Process: Myth and Reality in Law and Courts*. New York: Routledge, 375-417.
- Discussion Questions: How does the view of the Supreme Court presented in this chapter differ from how the Supreme Court has been explained to you in the past? Does the Supreme Court have too much power? Does it have too little power? How does the Supreme Court affect your everyday life?

9/20 **Massachusetts Appeals Court Oral Arguments**

- Instead of class, I want you to attend one of the Massachusetts Appeals Court oral arguments. These are held in Campus Center Room 163C from 9:30AM-1:00PM. Seven oral arguments will take place throughout the morning, each on the half hour. I want you to attend at least one oral argument session. No bags are allowed in the courtroom. We will discuss what you observed at oral arguments during the next class period.

9/27 **Why is the Scalia Vacancy So Important?**

- Reading: Matthews, Dylan. 2016. "How the First Liberal Supreme Court in a Generation Could Reshape America," *Vox*, <http://www.vox.com/2016/8/22/12484000/supreme-court-liberal-clinton> (accessed August 23, 2016).
- Reading: Morin, Amy. 2016. "5 Ways To Banish The Belief That You're Not Good Enough," *Huffington Post*, http://www.huffingtonpost.com/amy-morin/5-ways-to-banish-the-belief-that-youre-not-good-enough_b_10454422.html (accessed August 10, 2016).
- Discussion Questions: What is imposter syndrome? Have you ever experienced imposter syndrome? How might imposter syndrome influence your success in college? How can it be overcome? Why is the Scalia vacancy so important? In what ways would a liberal Supreme Court differ from a conservative Supreme Court? Which of the issues identified in the Matthews (2016) reading is most important to you? Do you believe the unelected Supreme Court should have a say in the future of this issue?

10/4 **What Makes for a Good Justice?**

- Reading: Wardlaw, Kim McLane. 2009. "Umpires, Empathy, and Activism: Lessons from Judge Cardozo." *Notre Dame Law Review* 85: 1629-1662 (you can skim the footnotes).
- Discussion Questions: What do you think about the "judges-as-umpires" analogy? Is it okay for judges to exhibit empathy? What are the consequences of this? What characteristics would you look for in a Supreme Court justice?

10/11 **Monday course schedule to be followed. Go to your Monday courses.**

10/18 **How Does the President Select a Nominee?**

- Reading: Collins and Ringhand, pages 16-34, 54-62.
- Reading: Zeilinger, Julie. 2014. "College 101: Making the Transition from High School to College," *Jezebel*, <http://jezebel.com/college-101-making-the-transition-from-high-school-to-1566703270> (accessed August 10, 2016).

- Discussion Questions: What obstacles have you faced in your first month on campus? How have you overcome these obstacles? What is the single most important thing you have learned transitioning to college? What factors do presidents look for in Supreme Court nominees? Does anything about these factors surprise you?

10/25 **The Role of the Senate Judiciary Committee I**

- Reading: Collins and Ringhand, pages 34-45, Chapter 4.
- Discussion Questions: What role does the Senate Judiciary Committee play in the confirmation process? Do you think the hearings are important? Why or why not?

11/1 **The Role of the Senate Judiciary Committee II**

- Reading: Collins and Ringhand, Chapter 6.
- Reading: Sen-Gupta, Gianna. 2014. “7 Tips for Choosing a College Major You’ll Love,” *Huffington Post*, http://www.huffingtonpost.com/gianna-sengupta/7-tips-for-choosing-a-col_b_5993994.html (accessed August 10, 2016).
- Discussion Questions: What obstacles have you been confronted with in choosing a major? If you have already chosen a major, what helped you make up your mind? What worries do you have choosing a major? What is a “confirmation condition?” How has the treatment of *Brown v. Board of Education* (1954) changed at the hearings? Do these changes surprise you? What do you think of Strong Thurmond’s treatment of Thurgood Marshall at his hearing? What do you think was the most interesting feature of this chapter?

11/8 **Confirming Nominees in the Senate**

- Reading: Collins and Ringhand, pages 45-54.
- Reading: Dinsmore, Scott. 2012. “The 7 Pillars of Connecting With Absolutely Anyone,” *Forbes*, <http://www.forbes.com/sites/theyec/2012/04/25/the-7-pillars-of-connecting-with-absolutely-anyone/#57aca7ef7d8b> (accessed August 10, 2016).
- Reading: Emba, Christine. 2016. “What is White Privilege?,” *Washington Post*, https://www.washingtonpost.com/blogs/post-partisan/wp/2016/01/16/white-privilege-explained/?utm_term=.5058b073e879 (accessed August 10, 2016).
- Discussion Questions: What obstacles have you faced making connections with the diverse group of individuals on campus? What tips do you have for overcoming these obstacles? Why is it important to recognize the existence of certain types of privilege? What do you think are the main factors that influence why senators support or oppose Supreme Court nominees? Do you think the U.S. has a logical and efficient process for confirming Supreme Court justices?

11/15 **What Happened to Robert Bork?**

- Reading: Collins and Ringhand, Chapter 7.
- Discussion Questions: Do you think Robert Bork was treated fairly? What positive characteristics would Bork have brought to the Supreme Court? What negative characteristics? Is it fair to reject nominees based on their ideologies?

11/29 **What Happened to Clarence Thomas?**

- Reading: Smolowe, Jill. 1991. "Sex, Lies and Politics: He Said, She Said." *Time*, October 21.
- Reading: Lithwick, Dahlia. 2014. "All These Issues Are Still With Us." *Slate*, http://www.slate.com/articles/double_x/doublex/2014/03/talking_to_anita_hill_at_57_the_woman_who_stood_up_to_clarence_thomas_is.html (accessed August 10, 2016).
- Discussion Questions: Do you think the allegations of sexual harassment were appropriately handled by the Judiciary Committee? Is it appropriate to factor in allegations of sexual harassment into the decision to support or oppose a nominee? Do you think the allegations of sexual harassment would be handled differently today?

12/6 **Viewing: *The West Wing* "The Supremes"**

- Discussion Questions: What parallels do you see in the episode and the current debate over filling Scalia's seat? How accurate is the nomination and confirmation process portrayed in the episode?

12/13 **Can We Improve the Process?**

- Reading: Collins and Ringhand, Chapter 9.
- Discussion Questions: Do you think the confirmation process is broken? What steps can we take to improve it? How realistic is it to expect the process to change?

Miscellaneous Information

Cell Phones and Laptop Computers: To minimize distractions, students are not allowed to use cell phones or laptops/tablets in this course. There is compelling evidence that laptops do more harm than good in the classroom (e.g., <http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom>).

Classroom Decorum: A university setting is a fertile ground for the exchange of ideas. I certainly encourage students to express their thoughts relevant to this class. However, students must do so in a respectful manner. If a student is unable to conduct him or herself in a means that is conducive to a learning atmosphere, that student will be removed from class. This includes demonstrating respect for your fellow students, as well as for the Professor. For example, it is unacceptable to come to class late, leave class early, or sleep during class.

Email Etiquette: Email is the preferred means of communication for the Professor outside of office hours. When you email the Professor, you need to follow some basic rules. First, insert the course title (Picking a U.S. Supreme Court Justice) or number (FFYS 197LEG1) into the subject line of your message. Second, plainly identify yourself and articulate the content of your message clearly. This means you should not use text message speak. Finally, before you email the Professor, you should review the syllabus and the course's Moodle page. It is very likely that you can find an answer to your question(s) by examining this syllabus or the Moodle page. Failure to follow these simple rules will generally result in a non-response from the target of your email communication.

Academic Honesty: Academic dishonesty will not be tolerated in this class. Incidents of academic dishonesty, such as cheating, fabrication, plagiarism, or facilitating 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 academic dishonesty, see the Professor.

Special Accommodations: 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, Learning Disabilities Support Services (LDSS), or Psychological Disabilities Services (PDS), please provide me with the proper paperwork and come and talk to me as soon as possible (preferably before the second week of classes).

If you are a student who speaks English as a second or additional language, please see me if you anticipate or encounter any difficulties with the reading and/or writing requirements of this course.

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