

Law, Politics, and the Media

LAW 839/PSC 700/NEW 500

Wednesday, 2:30p.m.-5:15p.m.

Room 204

Syracuse University College of Law

Spring 2013

Faculty

Keith J. Bybee

321 Eggers Hall

Law and Maxwell

Office Hours:

Monday 12:00-1:00

Wednesday 11:00-1:00

(and by appointment)

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Lisa A. Dolak

244F White Hall

Law

Office Hours:

Monday 12:00-2:00

(and by appointment)

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Roy S. Gutterman

Newhouse III, Rm 426

Newhouse Tully Center

Office Hours:

Monday 2:00-3:00

Tuesday 2:00-3:00

Wednesday 10:00-12:00

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Graduate Assistant

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Law

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Course Description

The American judicial system today operates in a complex environment of legal principle, political pressure, and media coverage. The separate elements of this complex environment are typically studied by different groups of individuals working from different perspectives. Law faculty tend to focus on legal principle; political scientists examine the influence of politics; and scholars of public communication assess the media.

The goal of this course is to introduce students to the court system and its environment as a single, integrated subject of study. To this end, the course is taught by a team of faculty instructors drawn from law, journalism, and political science. Academic discussions are complemented by lectures from prominent practitioners from the bench, the bar, the media, and the world of policymaking.

Topics to be covered in the course include: the relationship between education and entertainment in true crime narratives; public health issues; moderates in politics today; media and democracy; law and popular culture; unions and the media; Wiki-Leaks and confidential information; ethics and the law; judicial confirmations and the media; the politics of judicial selection; terror and the courts; and civics, the internet, and self governance.

Course Requirements and Grading:

Class participation (20%). Attendance will be taken at each class. If a student records more than two unexcused absences, then that student will be dropped the course. Please note that attendance is the minimum requirement for the participation grade. To receive a good participation grade, students must attend and actively participate in class discussions.

Two six-page papers critically assessing the presentations of two guest speakers (20% for each paper). Papers are due in class on the Wednesday following the lecture about which students choose to write. Students may choose the guest speaker they would like to assess in each of their response papers subject to the following requirement: students must write their first response paper on one of the first four guest speakers and write their second response papers on one of the last four speakers. The term “guest speaker” does not include course faculty. Response paper guidelines: A response paper is a critical appraisal of a speaker’s presentation. A paper should not simply summarize a presentation nor should it be a mere record of a student’s impressions. Instead, a response paper makes an argument (with a clear thesis, logically related assertions, and appropriate evidence) that shows how and why the student agrees or disagrees with a speaker’s claims. It is not necessary for a student to address every detail of the speaker’s lecture. The best response papers zero-in on several points that are essential to the speaker’s presentation and builds an analysis around those points. Please note that independent research is not required for the response papers. Depending on the argument that is being made in a given response paper, a student may sometimes find that he or she has to perform independent research in order to gather appropriate evidence. If so, the amount of independent research should be modest (students will have an opportunity to perform significant independent research in their research papers – see below). Since appropriate evidence can often be found in the required reading for the course, in the discussions led by course faculty, or in the arguments made by other guest speakers, independent research is not a mandatory element of the response papers. Finally, please note that the evidence used in response papers (whether or not the evidence results from independent research) must be properly cited.

Twenty-page (fifteen-page for NEW undergraduate students) research paper (40%). Requirements for the paper will be discussed in detail as the course progresses. Papers are due by 5:00pm on Wednesday, April 24. Students will be required to attend individual meetings with course faculty to discuss their research papers (all individual meetings will be arranged during regularly scheduled class time on March 6 and March 20).

LAW students: please note that this course is exempt from the upper-class grading curve.

Readings:

- Keith J. Bybee, All Judges Are Political—Except When They Are Not (Stanford University Press, 2010).
- Course reader with selected cases and articles.
- Handouts (to be distributed in class as the semester progresses).
- Online material (urls are provided on the course schedule below and links are on the course website <http://jpm.syr.edu/2013-lecture-series>). **THESE ARE SUBJECT TO CHANGE.** Please visit the syllabus posted on the course website regularly to ensure you are current with the class material.

All Judges Are Political and the course reader may be purchased through the University Bookstore.

Guest Lectures:

Over the course of the semester there will be eight guest lectures. The lecture dates are indicated on the course schedule. Lectures will be held in our usual classroom, will run from 4:00pm-5:15pm, and will be open to the public. There will be a small reception with refreshments after every lecture. Our class will meet before each lecture in our usual classroom for discussion, 2:30pm-3:45pm. The pre-lecture discussions will not be open to the public.

Course Lunches:

Each guest lecture will be preceded by an informal lunch for students in the course and the guest speaker. The lunches will be held 11:45am-12:45pm in the College of Law and food will be provided. Attendance at the lunches is optional, but students who do attend will have an invaluable opportunity to interact with the guest lecturers.

Additional Notes:

Law students: If you have a disability that may affect your performance in this class, please see College of Law Assistant Dean Tomas Gonzales, Suite 444, as soon as possible, to discuss necessary accommodations.

Newhouse and Maxwell students: If you have a disability that may affect your performance in this class, please contact the university Office of Disability Services (ODS), 304 University Avenue, Room 309, 315-443-4498.

We do not object to the use of tape recorders to record class discussion, but we do expect all cell phones, pagers, and similar devices to be turned off during class time. We also ask that students refrain from emailing, surfing the web, instant messaging, gaming, and other computer diversions during class.

Course Schedule:

Week 1 (1/9)

Welcome to Law, Politics, and the Media (Keith Bybee)

- Overview of course and requirements
- Discussion of 2010 Maxwell Poll (handout provided in class)

Week 2 (1/16)

Public perceptions of the courts and judicial legitimacy (Keith Bybee)

Readings:

- All Judges Are Political—Except When They Are Not, entire

Week 3 (1/23)

“Criminal Justice Journalism and the Politics of Fear: Finding the Balance Between Education and Entertainment in True-Crime Narratives”

Mark Obbie, Author and Journalist, former Executive Editor of *The American Lawyer*, and former Magazine Journalism faculty member at Syracuse University’s S.I. Newhouse School of Public Communications

Luncheon will be held at 11:45 in the College of Law

Readings:

- God’s Nobodies, available at Amazon for \$1.99 at: http://www.amazon.com/Gods-Nobodies-Misguided-American-ebook/dp/B00AKFUXFW/ref=sr_1_1?s=digital-text&ie=UTF8&qid=1355511952&sr=1-1

Week 4 (1/30)

“Public Health: Improving Health Through Politics, Policy, and People”

Cynthia Morrow, Commissioner of Health for Onondaga County in Syracuse, NY

Luncheon will be held at 11:45 in the College of Law

Readings:

- For the Public’s Health: Revitalizing Law and Policy to Meet New Challenges, Institute of Medicine of the National Academies, June 2011.
<http://www.iom.edu/~media/Files/Report%20Files/2011/For-the-Publics-Health-Revitalizing-Law-and-Policy-to-Meet-New-Challenges/For%20the%20Publics%20Health%202011%20Report%20Brief.pdf>

- Ten Great Public Health Achievements --- United States, 2001-2010, Centers for Disease Control and Prevention, May 20, 2011.
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6019a5.htm>

Week 5 (2/6)

“The Extinction of the American Moderate”

Michael Arcuri, former Member of the U.S. House of Representatives from New York's 24th District, Of Counsel, Hancock Estabrook LLP

Luncheon will be held at 11:45 in the College of Law

Readings:

- Course Reader Selections from Leading from the Center, by Gill Troy

Week 6 (2/13)

Wiki-Leaks and Confidential Information (Roy Gutterman)

Law and Popular Culture (Roy Gutterman)

Readings:

Wiki-Leaks and Confidential Information

- Branzburg v. Hayes, 408 U.S. 665
- Bill Keller, The Boy Who Kicked the Hornet’s Nest, The New York Times, Jan. 30, 2011. <http://jpm.syr.edu/wp-content/uploads/2012/12/Guilty-on-All-Counts-Law-and-Orders-Impact-on-Public-Perception-of-Law-and-Order.doc>

Law and Popular Culture

- Kimberlianne Podlas, Guilty on All Accounts: Law & Order’s Impact on Public Perception of Law and Order, Seton Hall Journal of Sports and Entertainment Law (2008)
<http://jpm.syr.edu/wp-content/uploads/2012/12/Guilty-on-All-Counts-Law-and-Orders-Impact-on-Public-Perception-of-Law-and-Order.doc>
- Law and Order Database: Cracking the Code by Mathew Belinkie
<http://www.overthinkingit.com/2012/11/27/the-law-and-order-database-correlations/>

Week 7 (2/20)

“Unions: Media, Perceptions and Policy” (Lisa Dolak)

“Media Consumption and Democracy: How’s Life in the Echo Chamber?” (Lisa Dolak)

Readings:

Unions

- Labor Unions Seen as Good for Workers, Not U.S. Competitiveness, Pew Research Center, February 17, 2011. <http://www.people-press.org/2011/02/17/labor-unions-seen-as-good-for-workers-not-u-s-competitiveness/>
- Actually, Americans Do support government Union Reform, *reason.com*, Emily Ekins, June 4, 2012. <http://reason.com/archives/2012/06/04/polling-analysis-the-public-does-support/print>
- Analysis: Why America's Unions are Losing Power, *CNN*, Josh Levs, December 12, 2012. <http://www.cnn.com/2012/12/11/us/union-power-analysis/index.html>
- Media Ignoring Labor Union Successes, *BeyondChron*, Randy Shaw, February 17, 2010. <http://www.beyondchron.org/news/index.php?itemid=7820>

Echo Chamber

- The Trouble With the Echo Chamber Online, *New York Times*, Natasha Singer, May 28, 2011
http://www.nytimes.com/2011/05/29/technology/29stream.html?_r=0
- The End of the Echo Chamber, *Slate*, Farhad Manjoo, January 17, 2012.
http://www.slate.com/articles/technology/technology/2012/01/online_echo_chambers_a_study_of_250_million_facebook_users_reveals_the_web_isn_t_as_polarized_as_we_thought.html
- The Blue-State Trap, *Salon*, Will Doig, January 23, 2012.
http://www.salon.com/2012/01/24/the_blue_state_trap/
- Political Media Fragmentation: Echo Chambers in Cable News, Rebecca Chalif, Georgetown University, July 2011.
[http://www.emandp.com/site_content/uploads/main_content/Political%20Media%20Fragmentation-%20Echo%20Chambers%20in%20Cable%20News\(1\).pdf](http://www.emandp.com/site_content/uploads/main_content/Political%20Media%20Fragmentation-%20Echo%20Chambers%20in%20Cable%20News(1).pdf)

Week 8 (2/27)

"Lawyers, Judges, Ethics Rules and the Limits on Speech"

Thomas Spahn, Partner, McGuire Woods

Luncheon will be held at 11:45 in the College of Law

Readings:

- What I Ate for Breakfast and Other Mysteries of Judicial Decision Making, Alex Kozinski, Loyola of Los Angeles Law Review, June 1993.
<http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1799&context=llr>
- Ethical Aspects of Political Dilemmas Faced by Appointed Judges, Barry R. Shaller, Yale Law and Policy Review.
http://yalelawandpolicy.org/sites/default/files/Schaller_30.pdf
- The Appearance of Propriety, *legal affairs*, Alex Kozinski, January/February 2005.
http://www.legalaffairs.org/issues/January-February-2005/argument_kozinski_janfeb05.msp
- Geyh selection from Course Reader

Week 9 (3/6)

Students meet with faculty to discuss research papers.

3/13: Spring Break. No class.

Week 10 (3/20)

Students meet with faculty to discuss research papers.

Week 11 (3/27)

“Media and the Judicial Confirmation Process”

Peter Canellos, *Boston Globe*, Editorial Page Editor

Luncheon will be held at 11:45 in the College of Law

Readings:

- TBD

Week 12 (4/3)

"Media Coverage and the Politics of Judicial Selection: A Conversation with Judge James E. Graves, Jr."

Judge James E. Graves, Jr., United States Court of Appeals, 5th Circuit and Keith J. Bybee, Paul E. and the Hon. Joanne F. Alper '72 Judiciary Studies Professor, Syracuse University College of Law

Readings:

- Course Reader: Selections from Bench Press. (Graves and Obbie chapters).

Week 13 (4/10)

"The Terror Courts"

Jess Bravin, *Wall Street Journal*, Supreme Court Reporter
Luncheon will be held at 11:45 in the College of Law

Readings:

- The Pentagon's Culture of Secrecy, Daniel Skallman, Reporters Committee for Freedom of the Press, Fall 2010. <http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-fall-2010/pentagons-culture-secrecy>
- JTF GTMO Ground Rules 10 Sept 2010
- OSD/PA MEDIA INVITATION
- Course Reader: The Conscience Of the Colonel

Week 14 (4/17)

"Civics, the Internet, and the Art of Self-Government"

Gene Koo, iCivics Executive Director

Luncheon will be held at 11:45 in the College of Law

Readings:

- CIRCLE Review of Literature of Education and Youth Civic Engagement
- Koo and Seider, Pro-Social Games
- Fault Lines in Our Democracy Report, ETS
- Guardians of Democracy (Campaign for Civic Mission of Schools 2011)
- Please play the following games at <http://www.icivics.org/>: 1) Do I Have a Right?; 2) Argument Wars; and 3) Branches of Power.

Week 15 (4/24)

Legislative Monday. No class today.

****PAPERS DUE TODAY BY 5:00 PM****

Students must turn in hard copies to the specific faculty member responsible for grading their papers. The hard copies should be turned in at the individual faculty offices (office locations are listed at the top of the syllabus).

Guest Speaker Biographies

Mark Obbie has been a legal-affairs journalist for more than 30 years. He is a former associate professor of magazine journalism at Syracuse University's S.I. Newhouse School of Public Communications and one of the founding faculty members of IJPM. He is the former executive editor of *The American Lawyer* magazine in New York and editor and publisher of *Texas Lawyer* newspaper, based in Dallas. He now is a freelance writer and author specializing in crime narratives and criminal justice policy stories.

Dr. Cynthia Morrow is Commissioner of Health for Onondaga County in Syracuse, NY. She is also an assistant professor of Public Health and Preventive Medicine and an assistant professor of Pediatrics at SUNY Upstate Medical University. In addition to the responsibilities of leading a large academic health department, Dr. Morrow is committed to developing and fostering community partnerships to address a wide range of public health concerns.

Dr. Morrow holds a Bachelor's degree in psychobiology from Swarthmore College and a combined MD/MPH from Tufts University School of Medicine in Boston, Massachusetts.

Michael Arcuri is a former member of the United States House of Representatives where he served as a member of the Rules Committee. From 1994 through 2006, he worked as the Oneida County District Attorney, where, in addition to a strong conviction record, he established the county's first drug courts, launched the Oneida County Drug Task Force, and created the Oneida County Child Advocacy Center. Mr. Arcuri is currently of counsel at Hancock Estabrook where he works in government relations, corporate law, white collar crime, and litigation.

Mr. Arcuri earned his B.A. from the University at Albany and his Juris Doctor from New York Law School. He is a contributor to the Politico Blog "The Arena" and acted as a Delegate for the 2008 Democratic Convention in Denver Colorado.

Thomas Spahn has practiced as a commercial litigator with McGuireWoods since 1977. Mr. Spahn regularly advises a number of Fortune 500 companies on such issues as properly creating and preserving the attorney-client privilege and work product protections when conducting corporate investigations, when hiring outside consultants, when dealing with the government, and during other daily and extraordinary situations. He has assisted in creating and defending privilege logs in many product liability and commercial litigation matters. He also advises in-house counsel on ethics issues, including conflicts of interest, confidentiality, dealing with corporate wrongdoing, and compliance with Sarbanes-Oxley requirements.

Mr. Spahn has written and lectured widely on such topics as ethics, professionalism, attorney-client privilege, work product doctrine, defamation, and legal writing. Tom has written several editions of a book on the attorney-client privilege and the work product doctrine. The ABA's General Practice Section honored Mr. Spahn's article on Litigation Ethics in the Modern Age as one of the "Best Articles Published by the ABA" in 2004.

Since 1988, Mr. Spahn has spoken at more than 1,000 CLE programs throughout the United States, and in several foreign countries. After personally reading, summarizing, and categorizing over 1,600 Virginia Bar Legal Ethics Opinions, he made his work available to the public online through his bio page on the McGuireWoods web site.

As Chairman of the Virginia State Bar Committee on Publications/Public Information, Mr. Spahn led that Committee in developing public service announcements articulating lawyers' benefit to society -- which were extensively published in Virginia, and purchased by the bars of six other states and the Canadian Bar Association. As Chairman of the Virginia Bar Association Commission on Professionalism, he acted as principal drafter of Principles of Professionalism that have been endorsed by the Virginia Supreme Court and the Virginia Attorney General's Office, and commended by both of Virginia's federal district courts.

He is a Fellow of both the Virginia Law Foundation and the American Bar Foundation (whose membership is limited to one-third of one percent of America's lawyers).

Mr. Spahn graduated *magna cum laude* from Yale University and received his J.D. from Yale Law School.

Peter Canellos was named editor of the Editorial Page in 2009. The former Washington bureau chief has authored the "National Perspective" column since 2003. He is a graduate of the University of Pennsylvania and Columbia Law School.

James E. Graves, Jr. is a distinguished and experienced Mississippi jurist, who was an attorney in private practice and public service before taking the bench. Justice Graves was confirmed to the 5th Circuit Court of Appeals on February 14, 2011. The only African-American serving on the Mississippi Supreme Court at the time of his appointment to the 5th Circuit, Justice Graves takes a keen interest in the administration of his state's court system, and has been active in national, state and local bar associations.

Justice Graves has served as a judge in the Mississippi court system since 1991, sitting for ten years on the Hinds County Circuit Court and, since 2001, on Mississippi's highest court first as an Associate Justice and currently as a Presiding Justice. Justice Graves began his legal career in 1980 as a staff attorney at Central Mississippi Legal Services. At that time he also began his 17 years of service as an Adjunct Professor at Jackson State University, teaching in the Departments of Mass Communications, Political Science, and Public Policy & Administration. After three years at Legal Services, Justice Graves entered private practice, focusing primarily on civil matters in state and federal court. From 1986 to 1990, he joined the Office of the Mississippi Attorney General, working as a Special Assistant Attorney General in the Human Services and Health Law divisions. He then served in the Mississippi Department of Human Services as the Director of the Division of Child Support Enforcement until his appointment to the Hinds County Circuit Court in 1991.

In addition to his legal work and teaching career, Justice Graves has been very active in local and national bar associations. Justice Graves is currently a Fellow of the Mississippi State Bar, and

has served on a variety of committees of the National Conference of State Trial Judges, working on issues of concern common to state judges. He also serves his state's court system as the current Chair of the Mississippi Supreme Court Rules Committee on Criminal Practice and Procedure. He formerly served as Chair of the Mississippi Supreme Court Committee on Administrative and Related Matters, the Supreme Court's Emergency Preparedness Committee, and Public Defender's Task Force, among others.

A Mississippi native, Justice Graves received his B.A. from Millsaps College in Jackson, Mississippi in 1975, and went on to earn his J.D. from Syracuse University in 1980, and a Masters in Public Administration from Syracuse in 1981.

Jess Bravin covers the Supreme Court for *The Wall Street Journal*, where he previously served as United Nations correspondent and editor of the weekly *WSJ/California*. He received the American Bar Association's Silver Gavel Award for coverage of law and terrorism after 9/11 and the U.N. Correspondents Association's Elizabeth Neuffer Memorial Prize for reporting on the International Criminal Court.

Bravin was educated at Harvard and Berkeley, and is a regent emeritus of the University of California. He is a contributor to books including *Crimes of War 2.0* and *Violence in America: An Encyclopedia*, and the author of *Squeaky: The Life and Times of Lynette Alice Fromme*. Bravin's latest book, *The Terror Courts* (Yale University Press), is based on a decade of reporting on military commissions prosecutions at Guantanamo Bay.

Gene Koo (Executive Director) works with iCivics' staff, Board and supporters to educate and engage a new generation of American citizens. He oversees all organizational activities, with a primary focus on aligning operations and strategy with organizational vision, achieving large-scale adoption, and securing long-term sustainability.

Prior to iCivics, Gene developed new media strategies to connect nonprofit organizations with their grassroots constituencies. As a Fellow at Harvard's Berkman Center for Internet & Society he brought Web-based innovation into law school classrooms and designed virtual worlds for civic engagement. Gene also co-founded the nation's first online skills training program for legal aid attorneys. He holds a J.D. and a B.A. from Harvard.