Readings in American Law: Judges in Their Own Words (395-001) – Spring 2014 (3 credits)

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Classes: (Limited to 10 students.) Thursdays, 10 a.m. to 12 noon in Room 412. Note: The course is scheduled for 10 to 11:50 a.m., but we will extend every class session to noon to make up for the fact that we will not meet on March 27. Office hours by appointment.

Purpose and sketch of the course: What is the point of studying a bunch of old stuff? Actually, there are at least four points: (1) to practice the healthy skepticism and intellectual initiative that should be parts of every lawyer’s professional reading habits; (2) to practice the careful study of law in contexts (b) to gain a deeper understanding and appreciation of important aspects of legal history; and (b) to enjoy one of the most enriching of lawyerly activities – reading about law and then probing its meaning and function with engaged colleagues. By the end of the semester you should be sufficiently expert in one important legal institution and a few significant legal figures to have both (a) some useful points of reference for your own assessment of lawyering in general and judging in particular, and (b) some sense of trends in the development of legal institutions and law practice. There is a lot of reading, and pre-class thinking, but if you like those activities you will like this course, because there isn’t much else required (the quizzses described below being pretty easy for anyone who does a good job of reading and preparing for discussion).

Texts:  
N.B.: Read the specified edition. It is the one we will discuss and on which you will be quizzed. Symbols: * = buy it (new or used); † = get it at www.rossdavies.org and print it out. Feel free to pair up with someone on this, and then sit next to each other in class.

* An autobiographical sketch of John Marshall (Michigan 1937) (John S. Adams, ed.), the whole thing
* The Miscellaneous Writings of Joseph Story (Little & Brown 1852) (William W. Story, ed.), pages 1-39  
† Memoir of Roger Brooke Taney, LL.D. (John Murphy & Co. 1872) (Samuel Tyler, ed.), pages 17-95  
* Stephen J. Field, Personal Reminiscences of Early Days in California (private printing 1893), pages 1-273  
† Miscellaneous Writings of the Late Hon. Joseph P. Bradley (L.J. Hardham 1902) (Charles Bradley, ed.), pages 45-79  
† Memoir of Henry Billings Brown (Duffield & Co. 1915) (Charles A. Kent, ed.), pages 1-33  
* Felix Frankfurter, Reminiscences of Reynal & Co. (1960), pages 3-30  
... and do NOT get this (we will use HeinOnline): Memorials of the Justices of the Supreme Court of the United States (Rothman 1981)

Assignments: Please: (1) do the assigned reading and come to class prepared to be quizzed on it and to discuss it, and (2) do outside research to support your contributions to the discussion. Permit me to emphasize: as heavy as the assigned reading may feel sometimes, doing that reading is only the first half of your mission. The second half is to engage in some investigation of the context and accuracy of the story the author is telling. So, as you read, note points where you want to know more or feel a bit skeptical about the story being told. Then follow up on a couple of those points – do some independent research to satisfy your curiosity. If the results of your digging include materials that ought to be shared before class or in class, email them to your instructor. You will occasionally be asked to do some independent research to satisfy your curiosity. So, generally speaking, the more class sessions you miss the lower your grade will be, and a failure to attend the number of classes that is specified in the course syllabus will cause you to fail the course. N.B.: Read the specified edition. It is the one we will discuss and on which you will be quizzed. Symbols: * = buy it (new or used); † = get it at www.rossdavies.org and print it out. Feel free to pair up with someone on this, and then sit next to each other in class.

(a) Read, take notes, research, and think about the assigned material. Stay an assignment or two ahead of schedule, just in case.
(b) Leave all electronics outside the classroom or, if you must bring them with you, keep them stowed during class. No laptops, no e-readers, no PDAs, etc. This means, of course, that you must prepare notes for class and print them out ahead of time.
(c) Note and follow in-class instruction. If you miss a class you must get notes from a classmate. Make arrangements in advance as a precaution against unanticipated absences. There is a strong tradition in law of sharing notes with colleagues in need. Be a part of it.
(d) Look up words you do not know. I recommend the latest editions of Black’s Law Dictionary, the OED, and American Heritage, plus a couple of roughly contemporary dictionaries – for example, Webster’s (1832) and Bouveier’s (1839) for Marshall/Story.

Grades: Your grade is based on closed-book quizzes and participation. Quizzes count for 1/3 of the grade. A quiz consisting of a few (ten or so) true/false or multiple choice questions as assigned reading material and given at the start of most classes in which we discuss new material. They are designed merely to determine whether you have, in fact, done the reading and paid attention. They are easy for anyone who has done the reading but not for someone who has not. There are no make-ups: a miss in which a quiz is administered, miss that quiz. Skipping class to avoid a quiz can be costly for two reasons: (1) grades are based mostly on participation and someone who is absent will find it hard to participate, and (2) if a student takes all quizzes, the lowest quiz score is excluded from final grade calculations. Participation counts for 2/3 of the grade. Let us be clear about this up front: Evaluation of participation is inevitably largely subjective, which means that if you do not like your participation grade there will be no basis for challenging it. Having said that, you are unlikely to get a bad grade if you come to every class prepared to make useful contributions, do in fact make them, and respect the listeners to whom you are contributing. It is because of those expectations that there is an electronics ban for this course. No one can google whatever we are talking about and then read something off a screen, passing it off as his or her own thought; no one can keyword-search off another student’s comment and then pose as having noticed and thought about the same thing. All of us must read and reflect and even do a little bit of our own research before class in order to be sure we have something useful to share. What a wonderful thing! Caution: Do not enroll in this course if you hope (due, for example, to success in a moot court competition) or expect (due, for example, to out-of-town travel) to have a schedule that conflicts with this course. In this course there is no substitute for participation, and a before- or after-class private chat with an instructor will not count as participation. No one who is given in class is no substitute for an absence that deprives your classmates (and instructors) of your contributions to our work together. So, generally speaking, the more class sessions you miss the lower your grade will be, and a failure to attend the number of class sessions required by our school’s regulations (they are available on the school website, and you are responsible for knowing and following them) will make you ineligible for course credit.

Intellectual property: The instructor owns all course content, regardless of form. You may share copies of that content with classmates during the course, but other than that you must keep all of it in any format to yourself forever. Recording of class sessions is forbidden.

I have read and do understand the rules of this course, and I know that following those rules is an important part of class participation. I will abide by all of them. Name (print): ____________________________ Signature (scribble): ____________________________ Date: ____________