

# Linguistic Analysis of Legal Texts Syllabus

(As of February 5, 2022)

**Web Site Address:** <http://www.clarkcunningham.org/JP/index.htm>

## **Course Information:**

[Clark D. Cunningham](#)

W. Lee Burge Chair in Law & Ethics

Fall Semester 2021 Wed, 4:10 pm - 5:50 pm

This course will be taught entirely online via Zoom.

Students must be available for class activities at the scheduled class time and keep their computer cameras live and on during class sessions conducted by Zoom.

## **Course Number: Law 7293 3 credits**

This course satisfies the upper level writing requirement

Prerequisites: Constitutional Law I and II, Criminal Procedure: Investigations, or [permission of the instructor](#). Enrollment may be limited.

This course is administered through a website on The West Educational Network (TWEN.) No textbook to purchase at bookstore. All required readings are linked to the on-line syllabus posted on TWEN.

## **Course Description**

Students will learn how to apply linguistic analysis and historical research to the interpretation of statutes and constitutional provisions. The course will be of particular value to students interested in a judicial clerkship after graduation.

The course grade will be based on:

10% - Class participation

20% - Paper: First Draft

50% - Paper: Final Draft

10% - Presentation of Research Findings

10% - Effective collaboration with linguist expert(s)

The grade for either the first draft or final paper will be reduced by the equivalent of a full letter grade (e.g. A to B, D to F) if submitted late without good cause. Further grade reduction is possible depending on how late a paper is submitted. A failing grade for a paper may be entered if submission is very late without good cause.

There will not be a final exam.

The class participation component of the course includes the expectation that, absent good cause, students will attend every on-line class meeting, having completed assigned readings and other assignments.

If a student is going to miss class or has missed class and needs an excused absence, or needs modification of a required assignment deadline, because of illness or quarantine the student is required by the University to submit documentation of medical need to the Office of the Dean of Students through the online form at: <https://deanofstudents.gsu.edu/student-assistance/professor-absence-notification/>. The instructor will be notified by the Dean of Students office staff; there is no need to submit any paperwork to the instructor. Students with medical needs will be accommodated but must submit all the necessary details through the online form to the Office of the Dean of Students.

### Required Materials

All required readings will be linked to the syllabus. There is no text to purchase at the bookstore.

### Contact Information

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### Class One (Wed, Aug 18, 4:10 – 5:50 pm – via Zoom)

Assignments:

- 1) Before class: complete short, online [Student Questionnaire and Learning Contract](#) (timely completion counts toward class participation grade)
- 2) [Students Present New Insights on Original Meaning of Constitution to Judges using “Big Data” of Corpus Linguistics](#), GSU College of Law News, May 21, 2018 (<https://news.gsu.edu/corpus-linguistics>)
- 3) Aaron Blake, [A big Trump case hinges on the definition of ‘emoluments.’ A new study has bad news for him](#) (Washington Post Jan 29, 2019)
- 4) Law Journal Editorial Board, [On Language, Lawyers and Judges Don't Have All the Answers](#) (March 22, 2019)
- 5) Go to [Workshop on Law & Linguistics](#) (Oct 18, 2019), select **10:05 am – 10:50 am** and [Watch video](#), viewing the following presentations from time code 10:53 to time code 38:46) (28 minutes total)
  - a. Prof. Jesse Egbert, Professor of Linguistics, Northern Arizona University, *Guiding Principles for Linguists Involved in Legal Interpretation* (time code 10:53 – 15:24)
  - b. Prof. Cunningham, *Context of In Re Trump amicus briefs* (time code 15:24 – 24:00)

- c. Prof. Egbert, *Corpus Linguistic Analysis of Emolument* (time code 24:00 – 29:26)
  - d. Prof. Eric Friginal, GSU Dept of Applied Linguistics: *Overview of Corpus Linguistics* (time code 29:58 – 38:46)
- 6) Ann E. Marimow & Jonathan O'Connell, [Court revives lawsuit targeting Trump's business dealings at D.C. hotel](#) (Washington Post May 14, 2020)
  - 7) [In re Trump](#), 958 F.3d 274, 286 (2020) (1 page) (citing Cunningham-Egbert *amicus* brief), [dismissed as moot](#) following inauguration of President Joe Biden (592 U.S. \_\_\_\_ Jan 25, 2021)
  - 8) View the following two student presentations and expert panel comments from Spring 2021 posted at <http://www.clarkcunningham.org/JP/index.htm> (scroll half-way down the page for the links) – each video is about 20 minutes long
    - a. Wednesday, April 14, 2021, [Ellen Messer, A Corpus Linguistics Analysis of “Unreasonable” at the Time of the Founding](#) Time Code 0:03:16 – 0:23:47
    - b. Wednesday, April 21, 2021, [Abigail Coker, Corpus Linguistics and The Ordinary Meaning of the Appointments Clause’s “Inferior Officers” Time Code](#) 1:14:40 – 1:37:43
  - 9) [Create a free account](#) at Law & Corpus Linguistics: BYU Law to use Corpus of Founding Era American English - COFEA (complete this before class)
  - 10) [Discussion Assignment: “office of honor, trust or profit”](#)
  - 11) *State v Nelson*, Supreme Court of Georgia. During Class Two on August 25, students will “moot” Prof. Cunningham to help him prepare for oral argument in the *Nelson* case in the Georgia Supreme Court on August 26. The following *Nelson* readings do not need to be completed by Class One but should be reviewed sufficiently in advance of Class Two so students can prepare “moot” questions for Prof. Cunningham.
    - a. [Order granting appeal](#)
    - b. [Order for oral argument](#)
    - c. [Oral argument \(by zoom\) scheduled for 10am docket on August 26](#). Oral argument can be watched by students in real time or when archived by the Court on August 27.
    - d. [Amicus brief](#) filed in *State v Nelson* (20 pp)

**Class Two (Wed, Aug 25, 4:10 – 5:50 pm – via Zoom)**

**Assignments and Quizzes– complete all using TWEN Assignment Drop Box Due 4pm on Aug 25**

- 1) COFEA Quiz (4 multiple choice questions) ([Preview instructions and questions](#))
- 2) Assignment 1: [Register to use GSU academic license for the English Corpora website](#)

3) COHA Quiz: (1 multiple choice question) ([Preview question](#))

4) *Nelson Moot Court Quiz*: write down two questions for Prof Cunningham ([read these instructions](#) before going to Drop Box to complete the quiz)

### Readings

- 12) [First Draft \(Oct 4 deadline\)](#) and [Final Paper](#) (new deadlines)
- 13) [Memo on Possible Paper Topics](#)
- 14) Corpus of Contemporary American English (COCA): [Short Introduction](#) ([pdf version](#))
- 15) Corpus of Historical American English (COHA): [Short Introduction](#)
- 16) Mark Davies, [English-Corpora.org: a guided tour](#) (pdf) pp 1-15, 19-20, 24-25
- 17) Tammy Gales & Lawrence Solan, [Revisiting a Classic Problem in Statutory Interpretation: Is a Minister a Laborer?](#) You can choose whether to read article or view power point slides first
  - Workshop on Law & Linguistics (Oct 18, 2019), [power point slides](#)
  - 36 GSU L. Rev. 491-533 (2020) available at <https://readingroom.law.gsu.edu/gsulr/vol36/iss5/7/>

### WEEK THREE

**Preliminary paper topic due Tues, Aug 31 at 5pm**

(email one paragraph description of topic to Prof. Cunningham and Sally Ren)

### Class Three (Sep 1)

- 18) View the 50 minute oral argument of *Nelson v State* at: <https://www.gasupreme.us/oral-arguments-august-26-2021/> Be prepared to discuss whether you think the State's argument (including questions from the justices) was influenced by the filing of the *amicus* brief and/or the *amicus* presentation at oral argument
- 19) Review [Sally Ren bio](#) and [assignment to be done during class](#)

### WEEK FOUR

**Linguistic research question due Tues, Sep 7 at 5pm**

(email to Prof. Cunningham and Sally Ren)

(can request extension for Rosh Hashanah)

### Class Four (Sep 8)

Research skills: legal scholarship, original historical sources

Developing a linguistic research plan

- 20) [Formation of the Constitution](#) (11 pp)
- 21) Review [course research guide](#) prepared by Prof. Pamela Brannon: <http://libguides.law.gsu.edu/constitutionalhistory>

- 22) [Instructions for Preliminary Bibliography](#) (due Mon, Sep 13 at 5pm - submit to Assignment Drop Box)
- 23) Clark D. Cunningham & Jesse Egbert, [Using Empirical Data to Investigate the Original Meaning of “Emolument” in the Constitution](#), 36 Georgia State Law Review 465 - 489 (2020) (skip or skim pp. 468-472) (focus on highlighted material as guide to developing a research question)
- 24) Rosamund Moon, [What can a corpus tells us about lexis?](#) (focus on pp. 202-207) (use Google/Wikipedia for unfamiliar linguistic terms – if still unclear, email Sally Ren)

### **Week Five**

#### **Preliminary bibliography due Mon, Sep 13 at 5pm**

(submit to Assignment Drop Box)

#### **Class Five (Sep 15)**

Mandatory 10-minute meeting with Prof Cunningham and Sally Ren to review legal bibliography and progress on research plan

(can request reschedule for Yom Kippur to earlier or later in the week)

Make appointment on TWEN. No password – set up with waiting room

- 25) Cunningham & Ren, [Some suggested initial steps in doing corpus research](#)
- 26) [Instructions for Linguistic Research Plan](#) (due September 20)
- 27) [State v Nelson](#), Supreme Court of Georgia (Sep. 8, 2021) (slip op. 11 double-spaced pages)

### **Week Six**

#### **Linguistic research plan due Mon, Sep 20 at 5pm**

(submit to Assignment Drop Box)

#### **Class Six (Sep 22)**

#### **Make appointment on TWEN. No password – set up with waiting room**

Mandatory individual 15-minute meeting with Prof Cunningham and Sally Ren from 4pm – 6pm

- 28) Lawrence B. Solum, [Surprising Originalism: The Regula Lecture](#), 9 ConLawNOW 235-277 (2018)

### **Week Seven**

#### **Class 7 (Sep 29)**

#### **Arguments for an original public meaning approach to legal interpretation**

Guest Speaker: [Georgia Chief Justice David E. Nahmias](#)

Chief Justice Nahmias was a Supreme Court clerk to Justice Scalia when he dissented in *Smith v U.S* (“use a firearm”). He is the former United States Attorney for the Northern District of Georgia and served as Deputy Assistant Attorney General for the Criminal Division at the U.S. Department of Justice.

- 29) Antonin Scalia, "[Interpreting Constitutional Texts](#)," in *A Matter of Interpretation* 37-47 (1997)
- 30) Review [Justice Scalia's dissent](#) in *Smith v United States*, 508 U.S. 223, 113 S.Ct. 2050 2060-63 (1993)
- 31) Neil M. Gorsuch, [2016 Sumner Canary Memorial Lecture: Of Lions and Bears, Judges and Legislators, and the Legacy of Justice Scalia](#), 66 Case Western L. Rev. 905-920 (2016)

### Week Eight

**First draft of seminar paper due Mon, Oct 4 at 5pm – Grade reduced by one grade level (e.g. A to B) if late without good cause**

**Instructions for [First Draft \(updated to Oct 4 deadline\)](#)**

(Submit to Assignment Drop Box)

**Anonymous Midterm Evaluation due by 4pm, Oct 6.**

### Class 8 (Oct 6)

Critiques of original public meaning approaches to legal interpretation

- 32) Eric Segall, *Racist Roots of Originalism* (Dorf on Law March 22, 2021), essay only – comments are not assigned, <http://www.dorfonlaw.org/2021/03/the-racist-roots-of-originalism.html>
- 33) Erwin Chemerinsky, [Are Supreme Court justices 'partisan hacks'? All the evidence says yes](#) (Los Angeles Times Sep. 19, 2021)
- 34) Michael C. Dorf, *Why Not to Be an Originalist* (Dorf on Law Nov. 14, 2019), essay only – comments are not assigned, <http://www.dorfonlaw.org/2019/11/why-not-to-be-originalist.html>
- 35) Richard S. Kay, [Original Interpretation and Public Meaning](#), 103 Nw. U.L. Rev. 701 (2009)

### Week Nine

**Graded first draft with comments posted in Assignment Drop Box, Tues. Oct 12**

### Class 9 (Oct 13)

**Optional 15-minute meeting with Prof Cunningham & Sally Ren to review comments on first draft, discuss progress toward final draft from 4pm – 6pm**

### Week Ten

#### Class 10 (Oct 20)

**Critiques of application of corpus linguistics to the interpretation of legal texts**

- 36) Brian G. Slocum & Stefan Th. Gries, [Judging Corpus Linguistics](#), 94 S. Cal. L. Rev. Postscript 13 (2020)
- 37) [McBoyle v. United States](#), 283 U.S. 25, 51 S.Ct. 30 (1931) (1 page)
- 38) [Discussion Problem: Vehicles in the Park](#) (1 page)  
[Vehicles in the Park Survey](#)

- 39) [Thomas R. Lee & Stephen C. Mouritsen, Judging Ordinary Meaning](#), 127 Yale L.J. 788, 836-45 (2018)  
[Download slides for class discussion](#)
- 40) [Kevin P. Tobia, Testing Ordinary Meaning](#), 133 Harv. L. Rev. 726, 753-58 (2020).

### Week Eleven

[Instructions for Week Eleven Assignments](#)

[Instructions for Final Paper \(updated with current deadlines\)](#)

**Draft abstract and draft power point presentation due Mon, Oct 25 at 5pm**

(Post to your forum on TWEN)

**Comments on colleague's abstract and power point due Wed, Oct 27 at noon**

**Point penalties for late submission**

Separate Assignment Drop Boxes – ALSO post to colleague's forum

[Instructions for Week Eleven Assignments](#)

[Instructions for Final Paper \(new deadlines\)](#)

### Class 11 (Oct 27)

**Practice power point presentations**

### Week Twelve

[Final paper, abstract and draft power point presentation](#) due Mon, Nov 1 at 5pm

**Separate Assignment Drop Boxes for final paper/abstract and draft power point**

### Class 12 (Nov 3)

**Individual 15-minute meetings with Prof Cunningham to finalize presentation from 4pm – 6pm**

### Week Thirteen

[Full schedule details for Nov 10 and 17](#)

**Class 13 (Nov 10)** (Three 25-minute presentations)

**Mandatory attendance for all students**

Presentations to expert panel

4:10 pm – 5:30 pm

Justice [Verda M. Colvin](#) (Supreme Court of Georgia)

Judge Jill A. Pryor (US Court of Appeals, 11<sup>th</sup> Circuit) ([official 11<sup>th</sup> Circuit bio](#)) ([additional information](#))

Judge [Andrew A. Pinson](#) (Court of Appeals of Georgia)

Professor [Ute Roemer](#) (GSU Department of Applied Linguistics and ESL)

4:10 Ray-Kelle Preston

4:35 Madison Caito

5:05 Madison Gibbs

## **Week Fourteen**

[Full schedule details for Nov 10 and 17](#)

**Class 14 (Nov 17)** (Four 25-minute presentations)

### **Mandatory attendance for all students**

Presentations to expert panels

4:10 pm – 5:00 pm

Justice [Nels S.D. Peterson](#) (Supreme Court of Georgia)

Presiding Judge [Christopher J. McFadden](#) (Court of Appeals of Georgia)

Professor [Lawrence Solan](#), Brooklyn Law School

4:10 Stephanie Miller

4:35 Jonathan Mok

5:00 pm – 5:50 pm

[Chief Justice David E. Nahmias](#) (Supreme Court of Georgia)

[Judge Jeffrey S. Sutton](#) (US Court of Appeals, 6<sup>th</sup> Circuit)

Professor [Jesse Egbert](#) (Northern Arizona University)

5:00 Julia Martin

5:25 Brittany Langley

### **Friday, Nov. 19 – by 11:55pm**

Complete the official GSU evaluation and supplemental Survey Monkey course evaluation.