
Washington University in St. Louis
School of Law

Law 760S. The Politics of the U.S. Supreme Court

Spring 2008 Semester

Instructor

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to schedule]

Class Schedule

Monday 3:00-5:00 PM
A-B 309

Course Description

This seminar has two basic purposes: to introduce students to the state of the art in legal and social scientific studies of the U.S. Supreme Court and to cover a series of particular topics, with emphasis on major controversies in the field. Topics include appointments to the Court; the internal deliberative processes of the justices in reaching their decisions; relations between and among the Court and the elected branches of government; and the impact of judicial decisions. Course materials will be drawn from original published studies. The seminar will meet weekly to discuss the assigned readings. Students are expected to participate actively in the seminar discussion. Each student will be required to write a 1-2 page reaction memorandum four times during the semester. These memoranda will be used to guide class discussion. Each student will also write three 5-6 page essays that require the student to apply theories and findings from the literature to contemporary problems. (This course is not graded anonymously because the professor works with students on written work throughout the semester.)

Requirements and Evaluation

Class meetings will be conducted as a seminar. Students are expected to come to class fully prepared to discuss the merits and lack thereof of the assigned readings. This means reading all of the assigned material ahead of time and thinking about how the various pieces might fit together. You should also follow what is happening on the Court during the semester by regularly following the SCOTUSblog (<http://www.scotusblog.com/>) or reading

a newspaper that covers the Court (such as the *New York Times* or *Wall Street Journal*). During the semester we may divert from the syllabus to discuss interesting political issues. Class attendance is mandatory. Please consult with me *in advance* if you cannot attend a seminar meeting for any reason.

At four times during the semester you will be required to write a 1-2 reaction memorandum. These memoranda must be your solely your work. On the first day of class you will receive a group letter (C, M, or L). The schedule below indicates what group is required to write a memorandum for a given week. These will not be formally graded although they will count toward class participation. The memos will form the basis for class discussion. Please write these memoranda to the seminar, and email them to my assistant, Andrea Donze (donze@wulaw.wustl.edu), before 9:00 AM the day of the seminar. She will distribute them via email to all of us. You should plan to read them before the seminar meets.

I will base student evaluation on two components:

- **Essays.** At three times during the semester you will write a critical essay about the politics of the Court. These essays must be solely your own work. I am happy to meet with students during the time they are writing to discuss their essays. Essays should be no longer than six pages in length (including any reference materials you wish to cite), double-spaced (including any footnotes) with one inch margins using a 12 point Times New Roman font. Topics will be assigned on February 18, March 17, and April 14 and will be due by 5:00 PM one week following. Please turn hard copies in to me personally in class or to my assistant Andrea Donze. Late assignments will not be accepted. Please note that assignments will not be graded anonymously. These graded essays will constitute 80% of the final course grade.
- **Class Participation.** I will assign each student a class participation score at the end of the semester. These scores will count for 20% of the final grade.

Grades will be assigned using the mandatory median (for seminars) required by the law school. I expect to use a symmetric distribution of grades around that median with a standard deviation of five unless I think a different standard deviation or allowing a skew better reflects aggregate performance in the course. I will give no incompletes in the course.

Readings

I have assigned four books for this course:

Lee Epstein and Jack Knight. 1998. *The Choices Justices Make*. CQ Press.

Lee Epstein and Jeffrey A. Segal. 2005. *Advice and Consent: The Politics of Judicial Appointments*. Oxford University Press.

H.W. Perry. 2005. *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Harvard University Press.

Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press.

In addition to these books, I have assigned a number of articles from peer-reviewed journals and law reviews. Links to these articles, whether as PDFs, JSTOR links, or HeinOnline links will be posted on my course website located at:

<http://adm.wustl.edu/courses/supct.php>

I will use this site to distribute other course content. I will also regularly use email to communicate with students in the course. Please check the course website and your email regularly. I will not be using the MyLaw site.

Course Topics and Schedule

Meeting 1. Organizational Meeting [1/14]

Meeting 2. The Attitudinal Model [2/1] [Memo: L]

Lee Epstein and Gary King. 2002. "The Rules of Inference." *University of Chicago Law Review*. 69: 1-133.

Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press.

Symposium on *The Supreme Court and the Attitudinal Model*. 1994. *Law & Courts Newsletter*.

Meeting 3. Measurement [2/4] [Memo: M]

Andrew D. Martin, Kevin M. Quinn, and Lee Epstein. 2005. "The Median Justice on the U.S. Supreme Court." *North Carolina Law Review*. 83: 1275-1321.

C. Neal Tate. 1981. "Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economics Decisions, 1946-1978." *American Political Science Review*. 75: 355-367.

Jeffrey A. Segal and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review*. 83: 557-565.

Symposium on the Supreme Court Forecasting Project. 2004. *Perspectives on Politics*.

Meeting 4. Guest Speaker: Professor Chris Zorn [2/11] [Memo: C and L]

Greg Caldeira and Chris Zorn. "Measuring Supreme Court Ideology." Working paper.

Meeting 5. Strategic Models [2/18] [Memo: M]

Lee Epstein and Jack Knight. 1998. *The Choices Justices Make*. CQ Press.

William N. Eskridge, Jr. 1991. "Reneging on History: Playing the Court/Congress/President Civil Rights Game." *California Law Review*. 79: 613-684.

Meeting 6. Legal Models [2/25] [Memo: C]

Frank Cross. 1997. "Political Science and the New Legal Realism." *Northwestern Law Review*. 92: 251-326.

Barry Friedman. 2005-2006. "The Politics of Judicial Review." *Texas Law Review*. 84: 257-337.

Tracey E. George and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *American Political Science Review*. 86: 323-337.

Mark J. Richard and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review*. 96: 305-321.

Meeting 7. The Chief Justice [3/3] [Memo: L]

David J. Danelski. 1968. "The Influence of the Chief Justice in the Decisional Process." In *The Federal Judicial System: Readings in Process and Behavior*. Holt, Rinehart, and Winston.

Forrest Maltzman and Paul J. Wahlbeck. 1996. "May It Please the Chief? Opinion Assignments in the Rehnquist Court." *American Journal of Political Science*. 40: 421-443.

Theodore W. Ruger. 2004. "The Judicial Appointment Power of the Chief Justice." *University of Pennsylvania Journal of Constitution Law*. 7: 341-402.

Meeting 8. Lawyering [3/17] [Memo: M]

Timothy R. Johnson, Paul J. Wahlbeck, and James F. Spriggs, II. 2006. "The Influence of Oral Arguments on the U.S. Supreme Court." *American Political Science Review*. 100: 99-113.

Kevin McGuire. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." 1995. *Journal of Politics*. 57: 187-196.

Richard L. Pacelle. 2006. "Amicus Curiae or Amicus Praesidentis?" *Judicature*. 89: 317-325.

James F. Spriggs, II and Paul J. Wahlbeck. 1997. "Amicus Curiae and the Role of Information at the Supreme Court." *Political Research Quarterly*. 50: 365-386.

Meeting 9. Agenda Setting [3/24] [Memo: C]

Gregory A. Caldeira, and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review*. 82: 1109-1127.

H.W. Perry. 2005. *Deciding to Decide: Agenda Setting in the United States Supreme Court*.

Harvard University Press.

Meeting 10. Appointments [3/31] [Memo: L]

Steven G. Calabresi and James Lindgren. 2006. "Term Limits for the Supreme Court: Life Tenure Reconsidered." *Harvard Journal of Law and Public Policy*. 29: 770-887.

Lee Epstein and Jeffrey A. Segal. 2005. *Advice and Consent: The Politics of Judicial Appointments*. Oxford University Press.

Byron J. Moraski and Charles R. Shipan. 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices." *American Journal of Political Science*. 43:1069-1095.

Meeting 11. The Court and Public Opinion [4/4] [Memo: M]

Lee Epstein, Daniel E. Ho, Gary King, and Jeffrey A. Segal. 2005. "The Effect of War on the Supreme Court." *New York University Law Review*. 80: 1-116.

Charles H. Franklin and Liane C. Kosaki. 1989. "The Republican School Master: The Supreme Court, Public Opinion, and Abortion." *American Political Science Review*. 83: 751-771.

James L. Gibson, Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. "Measuring Attitudes toward the United States Supreme Court." *American Journal of Political Science*. 47: 354-367.

Timothy R. Johnson and Andrew D. Martin. 1998. "The Public's Conditional Response to Supreme Court Decisions." *American Political Science Review*. 92: 299-310.

Kevin T. McGuire and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." *Journal of Politics*. 66: 1018-1035.

Meeting 12. Impact [4/14] [Memo: C]

Jonathan D. Casper. 1976. "The Supreme Court and National Policy Making." *American Political Science Review*. 70: 50-63.

Robert Dahl. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law*. 6: 279-295.

Lee Epstein, Jack Knight, and Andrew D. Martin. 2001. "Dahl Symposium: The Supreme Court as a Strategic National Policymaker." *Emory Law Journal*. 50: 583-611.

Donald R. Songer, Jeffrey A. Segal, and Charles M. Cameron. 1994. "The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions." *American Journal of Political Science*. 38: 673-96.