

POLI 850 - Seminar on Public Law – Spring 2008

Monday 6:10 – 8:40 P.M.

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Office Hours
M W 10:00-11:30
T 10:00-11:00

Background:

This is an advanced seminar on the courts, judicial process, and judicial behavior. It is designated as a "research seminar." That is, a major focus of the seminar will be to teach how to conduct research on law and courts and the seminar will require students to complete a major research paper. It is assumed that students will enter the course with a substantial substantive and methodological background for the study of the courts.

Orientation and Goals

The goals for this semester will include:

- a. to provide an overview of the most important scholarship on the behavior of judges and on courts as political and legal institutions, with a primary focus on courts in the US
- b. to sharpen your analytical skills.
- c. to prepare students to do empirical research on courts.
- d. to increase the capabilities of students to effectively write for social science journals and professional conventions.

In order to accomplish these goals, students will be expected to:

1. read and critique the written work of the other students in the class.
2. come to each class prepared to discuss and critically analyze the assigned reading for the class. Each student's preparation for each class should be based on the assumption that they will be responsible for leading and stimulating the class discussion of the most significant and interesting topics from the assigned reading. Every student will be expected to participate in discussion every class.
3. practice the art of writing research questions and literature reviews.
4. write an original empirical paper on the courts which is suitable for submission for publication to an appropriate professional journal.
5. Participate in relevant professional activities of the department.

Grades:

- 20% Class discussion
30% short papers – critical assessments of reading & research questions suggested by assigned reading
50% Empirical Research Paper

In preparation for each week's class:

There will be some core reading (usually one book) that everyone will do and a much larger set of readings for those who anticipate pursuing research in the area. In addition to the general preparation for class that every student will be expected to do each week (see # 1 and #2 above), each student will perform each of the following roles **twice** during the semester:

- 1) Write a mini-research design (about 5 pages) for the most important question suggested by the week's topic that needs further research. Focus on data & measures & methods.
- 2) Write a critical assessment of a larger set of reading related to the week's topic – you should focus especially on inadequacies in theory, data, measures. What are the limits to our ability to generalize from the literature ?
- 3) Suggest research question related to the assigned topic and then write a theory/literature review in the style of the introduction/lit review section of a journal article.

All of the above will be distributed in advance (by 6:00 P.M. on Sunday) to all in class and all will be critiqued in class. In fact, the critique of these three papers will be a main activity of each class.

Short papers will be graded rigorously and returned promptly.

Note: your major empirical research paper may be an extension of one of your short papers; in fact, you are encouraged to adopt this strategy.

CODEBOOKS AND DATA BASES:

Benesh, Sara C. 2002. *Becoming an Intelligent User of the Spaeth Supreme Court Databases*. Prepared for the Southwestern Political Science Association Meeting, New Orleans, LA, March. Available from The Program in Law and Judicial Politics, Department of Political Science, Michigan State University at http://www.polisci.msu.edu/pljp/benesh_handout.pdf

Spaeth, Harold J. 2002. *Original United States Supreme Court Judicial Database (1953-2001 Terms)*. Updated: October 29, 2002. The database and its documentation are available to scholars at the web page of the S. Sidney Ulmer project, <http://www.as.uky.edu/polisci/ulmerproject>

Spaeth, Harold J. 2002. *Vinson-Warren Court Database (1946-1968 Terms)* (Updated: September 25, 2002) and *The Burger Court Database (1969-1985 Terms)* (Updated: September 25, 2002). Conference vote data plus final vote data. The conference vote data for 1946-1968 were collected by Professor Jan Palmer of Ohio University.. The conference vote data for 1969-1985 were collected by graduate students under the direction of Professor Lee Epstein of Washington University. The database and its documentation are available to scholars at the web page of the S. Sidney Ulmer project, <http://www.as.uky.edu/polisci/ulmerproject>

- Spaeth, Harold J. 2002. *Justice-Centered Rehnquist Court Database (1986-1998 Terms)* (Updated: March 5, 2002). The transformation of the date from case- to justice-centered format was accomplished by Professor Sara Benesh of the University of New Orleans (now at the University of Wisconsin-Milwaukee). The database and its documentation are available to scholars at the web page of the S. Sidney Ulmer project, <http://www.as.uky.edu/polisci/ulmerproject>
- Songer, Donald R. 1998. *United States Courts of Appeal Database*. Interuniversity Consortium for Political and Social Research. Study number 2086. The database and its documentation are available to scholars at the web page of the S. Sidney Ulmer project, <http://www.as.uky.edu/polisci/ulmerproject>
- Brace, Paul and Melinda Gann Hall. 2002. *State Supreme Court Database*. Current information and beta data base sample available at <http://www.ruf.rice.edu/%7Eepbrace/statecourt/>
- Federal Judicial Center. 2001. *Federal Court Cases: Integrated Data Base, 1970-2000*. Ann Arbor: Interuniversity Consortium for Political and Social Research. Study number 8429. Available at <http://www.icpsr.umich.edu:8080/ICPSR-STUDY/08429.xml>
- Federal Judicial Center. 2001. *Federal Court Cases: Integrated Data Base, 2001*. Ann Arbor: Interuniversity Consortium for Political and Social Research. Study number 3415. Available at <http://www.icpsr.umich.edu:8080/ICPSR-STUDY/03415.xml>
- Federal Judicial Center. 2002.. *Federal Court Cases: Integrated Data Base, 2001*. 2nd ICPSR version. Washington, DC: Federal Judicial Center [producer], 2001. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor]. Available at <http://www.icpsr.umich.edu:8080/ICPSR-STUDY/03415.xml>
- Gary Zuk, Deborah J. Barrow, and Gerard S. Gryski. 1997. *Multi-User Database on the Attributes of United States Appeals Court Judges, 1801-1994*. First ICPSR Edition. Ann Arbor: Interuniversity Consortium for Political and Social Research. Study number 6796. The database and its documentation are available to scholars at the web page of the S. Sidney Ulmer project, <http://www.as.uky.edu/polisci/ulmerproject>
- Martinek, Wendy. 2000. *Lower Federal Court Confirmation Database*. Available from The Program in Law and Judicial Politics, Department of Political Science, Michigan State University at <http://www.polisci.msu.edu/pljp/ConfirmationData.html>

Schedule

Week 1- Jan.14 **The Beginning of the Debate**

Required Reading

Segal & Spaeth, (2002) *The Supreme Court and the Attitudinal Model Revisited*

Other General Literature on Researching Courts

Symposium on “Strategies for Judicial Research: Soaking and Poking in the Judiciary.” 1990. *Judicature* 73(4):192-203.

- Baum, Lawrence. 1994. "What Judges Want: Judges' Goals and Judicial Behavior." *Political Research Quarterly* 47:749-768.
- Epstein, Lee and Gary King. 2002. "The Rules of Inference." *University of Chicago Law Review* 69(1):1-133.
- Gibson, James L. 1983. "From Simplicity to Complexity: The Development of Theory in the Study of Judicial Behavior." *Political Behavior* 5:7-49.
- Howard, J. Woodford. 1971. "Judicial Biography and the Behavioral Persuasion." *American Political Science Review* 65(September):704-715.
- Cook, Beverly B. 1993. "Measuring the Significance of U.S. Supreme Court Decisions." *Journal of Politics* 55:1127-1139.
- Epstein, Lee, and Jeffrey A. Segal. 2000. "Measuring Issue Salience." *American Journal of Political Science* 44(1):66-83.
- Baum, Lawrence. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: University of Michigan Press. ISBN 0-472-08335-X.
- Epp, Charles R. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: The University of Chicago Press. ISBN 0-226-21162-2. Paper.

(No class Jan 21 – MLK holiday)

Week 2 – Jan 28- ATTITUDINAL MODEL 1-

Required reading:

Students who took Comparative Courts, read:

Osteberg & Wetstein (2007), Attitudinal Decision Making in the Supreme Court of Canada

Others read:

Robertson (1998), Judicial Discretion in the House of Lords

Other Important Literature on Attitudinal Approaches

- Schubert, Glendon. 1959. *Quantitative Analysis of Judicial Behavior*. Glencoe, IL: The Free Press. Chapters 1 and 6.
- Schubert, Glendon A. 1965. *The Judicial Mind*. Evanston, IL: Northwestern University Press. Chapters XX.
- Rohde, David W., and Harold J. Spaeth. 1976. *Supreme Court Decision Making*. San Francisco: W.H. Freeman and Co. Chapters 4 and 7.
- Segal, Jeffrey A., and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review* 83:557-565.
- Hagle, Timothy M., and Harold J. Spaeth. 1993. "Ideological Patterns in the Justices' Voting in the Burger Court's Business Cases." *Journal of Politics* 55(2): 492-505.
- Pritchett, C. Herman. 1948. *The Roosevelt Court: A Study in Judicial Politics and Values, 1937-1947*. New York: The MacMillan Company.
- Segal, Jeffrey A., and Harold J. Spaeth. 1993. *The Supreme Court and the Attitudinal Model*. New York: Cambridge University Press.
- Review symposium of *The Supreme Court and the Attitudinal Model*. *Law and Courts* 4: 3-11 (1994).

Sunstein, Cass, David Schkade, Lisa Ellman & Andres Sawicki. 2006. *Are Judges Political ? An Empirical Analysis of the Federal Judiciary* (Brookings)

(Measuring Judicial Attitudes, Preferences, and Ideology)

- Brace, Paul, Laura Langer, and Melinda Gann Hall. 2000. "Measuring the Preferences of State Supreme Court Judges." *Journal of Politics* 62(2):387-413.
- Epstein, Lee, Valerie Hoekstra, Jeffrey A. Segal, and Harold J. Spaeth. "Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices." *Journal of Politics* 60(3):801-818.
- Epstein, Lee, and Carol Mershon. 1996. "Measuring Political Preferences." *American Journal of Political Science* 40:261-294.
- Martin, Andrew D., and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999." *Political Analysis* 10(2):134-153.
- Segal, Jeffrey A., Lee Epstein, Charles M. Cameron, and Harold J. Spaeth. 1995. "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited." *Journal of Politics* 57:812-823.

(Social Background and Personal Attribute Models)

- Songer, Donald R., Sue Davis, and Susan Haire. 1994. "A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals." *Journal of Politics* 56:425-39.
- Songer, Donald R., and Susan J. Tabrizi. 1999. "The Religious Right in Court: The Decision Making of Christian Evangelicals in State Supreme Courts." *Journal of Politics* 61(2):507-526.
- Tate, C. Neal. 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.
- Tate, C. Neal, and Roger Handberg. 1991. "Time Binding and Theory Building in Personal Attribute Models of Supreme Court Voting Behavior, 1916-1988." *American Journal of Political Science* 35:460-480.
- Tate, C. Neal and Panu Sittiwong. 1989. Explaining the Decision Making of the Canadian Supreme Court, 1949-1985: Extending the Personal Attributes Model Across Nations, *Journal of Politics*, 51 (November), 900-15.
- Ulmer, S. Sidney. 1973. "Social Background as an Indicator to the Votes of Supreme Court Justices in Criminal Cases: 1947-1956." *American Journal of Political Science* 17:622-630.
- Ulmer, S. Sidney. 1986. "Are Social Background Models Time-Bound?" *American Political Science Review* 80:957-967.

Week 3- Feb. 4- **ATTITUDINAL MODEL 2** –

Required reading:

[AJPS 1996 \(40: 971-1082\) symposium on Attitudinal Model](#)

Other Important Literature on Attitudinal Approaches

Spaeth, Harold J., and Jeffrey A. Segal. 1999. *Majority Rule or Minority Will*. New York:

- Cambridge University Press.
- Brenner, Saul, and Harold J. Spaeth. 1995. *Stare Indecisus: The Alteration of Precedent on the U.S. Supreme Court, 1946-1992*. Cambridge, MA: Cambridge University Press.
- George, Tracey E., and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *American Political Science Review* 86:323-337.
- Baum, Lawrence. 1988. "Measuring Policy Change in the U.S. Supreme Court." *American Political Science Review* 82:905-912.

(lower courts)

- Hettinger, Virginia, Stefanie Lindquist, & Wendy Martinek. 2006. *Judging on a Collegial Court: Influences on Federal Appellate Decision Making* (university of Virginia Press)
- Atkins, Burton M., and Justin J. Green. 1976. "Consensus on the United States Courts of Appeals: Illusion or Reality." *American Journal of Political Science* 20(4):735-748.
- Carp, Robert A., and Ronald Stidham. 1998. *The Federal Courts*. 3rd ed. Washington, DC: CQ Press.
- Carp, Robert A. and C. K. Rowland. 1983. *Policymaking and Politics in the Federal District Courts*. Knoxville, TN: University of Tennessee Press
- Rowland, C.K., and Robert A. Carp. 1996. *Politics and Judgment in the Federal District Courts*. Lawrence, KS: The University Press of Kansas.
- Songer, Donald R., Reginald S. Sheehan, and Susan B. Haire. 2000. *Continuity and Change on the United States Courts of Appeals*. Ann Arbor, MI: University of Michigan Press.
- Brace, Paul, and Melinda Gann Hall. 1995. "Studying Courts Comparatively: The View from the American States." *Political Research Quarterly* 48:5-29.
- Songer, Donald R., and Martha Humphries Ginn. 2002. Assessing the Impact of Presidential and Home State Influences on Judicial Decision-Making in the United States Courts of Appeals. *Political Research Quarterly* 55(2) (June): 299-328.

Week 4- Feb. 11- **LEGAL MODEL 1** –

Required reading:

Hansford & Spriggs. (2007). *The Politics of Precedent*

Segal, Jeffrey A. 1984. "Predicting Supreme Court Decisions Probabilistically: The Search and Seizure Cases, 1962-1981." *American Political Science Review* 78:891-900.

Richards, Mark J., and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96(2):305-320.

Other Important Literature on Legal Approaches

- Beuno de Mesquita, Ethan and Matthew Stephenson. 2002. Informative Precedent and Intra-judicial Communication. *American Political Science Review* 96 (4) (December):755-766.
- Gates, John, and Glenn A. Phelps. 1996. "Intentionalism in Constitutional Opinions." *Political Research Quarterly* 48:245-261.
- Rasmusen, Eric. 1994. "Judicial Legitimacy as a Repeated Game." *Journal of Law, Economics, & Organization* 10:63-83.
- Gillman, Howard. 1993. *The Constitution Besieged: The Rise and Demise of Lochner Era Police Powers Jurisprudence*. Durham, NC: Duke University Press.
- Howard, Robert M., and Jeffrey A. Segal. 2002. "An Original Look at Originalism." *Law & Society Review* 36(1):113-137.
- Landes, William M., and Richard A. Posner. 1976. "Legal Precedent: A Theoretical and Empirical Analysis." *The Journal of Law and Economics* 19(August):249-307.
- Phelps, Glenn A., and John B. Gates. 1991. "The Myth of Jurisprudence: Interpretive Theory in the Constitutional Opinions of Justices Rehnquist and Brennan." *Santa Clara Law Review* 31:567-596.
- Shapiro, Martin. 1965. "Stability and Change in Judicial Decision-Making: Incrementalism or Stare Decisis." *Law in Transition Quarterly* 2:134-157.
- Ostberg, -C.-L.; Wetstein, -Matthew-E; Ducat, -Craig-R. 2001. Attitudes, Precedents and Cultural Change: Explaining the Citation of Foreign Precedents by the Supreme Court of Canada. *Canadian Journal of Political Science*. 34:377-99
- Posner, *The Problems of Jurisprudence*
- Rehnquist, *The Supreme Court: How it was, how it is*.
- Richardson, Richard J. & Kenneth Vines, *Politics of the Federal Courts* (Little Brown, 1970).
- Dworkin, *A Matter of Principle*
- Carter, Lief. *Reason in Law*

Week 5- Feb. 18 - LEGAL MODEL 2 –

Required reading:

Klein (2002), *Making Law in the United States Courts of Appeals*

Knight, Jack, and Lee Epstein. 1996. "The Norm of Stare Decisis." *American Journal of Political Science* 40(4):1018-1035.

Other Important Literature on Legal Approaches

- Gillman, Howard. 1999. "The Court as an Idea, Not a Building (Or a Game): Interpretive Institutionalism and the Analysis of Supreme Court Decision Making." In *Supreme Court Decision-Making: New Institutional Approaches*, ed. Cornell Clayton and Howard Gillman. Chicago: The University of Chicago Press.
- Caldeira, Gregory A. 1985. "The Transmission of Legal Precedent: A Study of State Supreme Courts." *American Political Science Review* 79(March):178-193.

- Epstein, Lee, and Joseph F. Kobylka. 1992. *The Supreme Court and Legal Change: Abortion and the Death Penalty*. Chapel Hill, NC: University of North Carolina Press.
- Johnson, Charles A. 1986. "Follow-Up Citations in the U.S. Supreme Court." *Western Political Quarterly* 39(September):538-547.
- Spriggs, James F., II, and Thomas G. Hansford. 2000. "Measuring Legal Change: The Reliability and Validity of *Shepard's Citations*." *Political Research Quarterly* 53(June):327-341.
- Spriggs, James F., II, and Thomas G. Hansford. 2002. "The U.S. Supreme Court's Incorporation and Interpretation of Precedent." *Law and Society Review*. 36(1):139-159.
- Songer, Donald R., and Susan Haire. 1992. "Integrating Alternative Approaches to the Study of Judicial Voting: Obscenity Cases in the U.S. Courts of Appeals." *American Journal of Political Science* 36:963-982.

Week 6 – Feb. 25 - **STRATEGIC 1** –

Required reading:

Maltzman, Spriggs, Wahlbeck (2000), *Crafting Law on the Supreme Court*
Epstein, Lee, and Jack Knight. 2000. "Toward a Strategic Revolution in Judicial Politics: A Look Back, A Look Ahead." *Political Research Quarterly* 53(3):625-661.

Other Important Literature on Strategic Approaches

- Hammond, Thomas, Chris Bonneau & Reginald Sheehan. 2005. *Strategic Behavior and Policy Choice on the US Supreme Court* (Stanford University Press)
- Songer, Donald R., 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(August):673-696.
- Brace, Paul R., and Melinda Gann Hall. 1997. "The Interplay of Preferences, Case Facts, Context, and Rules in the Politics of Judicial Choice." *Journal of Politics* 59(4):1206-1231.
- Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, DC: Congressional Quarterly Press. Chapters 1, 3, and 4.
- Murphy, Walter F. 1964. *Elements of Judicial Strategy*. Chicago: University of Chicago Press.
- Dahl, Robert A. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law* 6:279-295.
- Casper, Jonathan. 1976. "The Supreme Court and National Policy Making." *American Political Science Review* 70:50-63.
- Rogers, James, Roy Flemming & Jon Bond, eds., 2006. *Institutional Games and the US Supreme Court* (University of Virginia Press)

(The Executive Branch and Courts)

- Caplan, Lincoln. 1987. *The Tenth Justice: The Solicitor General and the Rule of Law*. New York: Alfred A. Knopf.
- King, Kimi Lynn, and James Meernik. 1999. "The Supreme Court and the Powers of the Executive: The Adjudication of Foreign Policy." *Political Research Quarterly* 52(4):801-824
- McGuire, Kevin T. 1998. "Explaining Executive Success in the U.S. Supreme Court." *Political Research Quarterly* 51(2):505-526.
- Segal, Jeffrey A. 1988. "Amicus Curiae Briefs by the Solicitor General During the Warren and Burger Courts: A Research Note." *Western Political Quarterly* 41:135-144.
- Segal, Jeffrey A. 1990. "Supreme Court Support for the Solicitor General: The Effect of Presidential Appointments." *Western Political Quarterly* 43:137-152.
- Yates, Jeff. 2002. *Popular Justice: Presidential Prestige and Executive Success in the Supreme Court*. Albany, NY: State University of New York Press.
- Zorn, Christopher J. W. 2002. "U.S. Government Litigation Strategies in the Federal Appellate Courts." *Political Research Quarterly* 55(1):145-166.

(Voting Fluidity)

- Brenner, Saul. 1980. "Fluidity on the United States Supreme Court: A Reexamination." *American Journal of Political Science* 24:526-535.
- Hagle, Timothy M., and Harold J. Spaeth. 1991. "Voting Fluidity and the Attitudinal Model of Supreme Court Decision Making." *Western Political Quarterly* 44:119-128.
- Howard, J. Woodford. 1968. "On the Fluidity of Judicial Choice." *American Political Science Review* 62:43-56.
- Maltzman, Forrest, and Paul J. Wahlbeck. 1996. "Strategic Policy Considerations and Voting Fluidity on the Burger Court." *American Political Science Review* 90:581-592.

(Opinion Assignment)

- Brenner, Saul. 1982. "Strategic Choice and Opinion Assignment on the U.S. Supreme Court: A Reexamination." *Western Political Quarterly* 204-211.
- Davis, Sue. 1990. "Power of the Court: Chief Justice Rehnquist's Opinion Assignments." *Judicature* 74:66-72.
- Maltzman, Forrest, and Paul J. Wahlbeck. 1996. "May It Please the Chief? Opinion Assignments in the Rehnquist Court." *American Journal of Political Science* 40:421-443.
- Rohde, David W. 1972. "Policy Goals, Strategic Choice, and Majority Opinion Assignments in the U.S. Supreme Court." *Midwest Journal of Political Science* 16:652-682.

(Coalition Formation)

- Giles, Micheal W. 1977. "Equivalent Versus Minimum Winning Opinion Coalition Size: A Test of Two Hypotheses." *American Journal of Political Science*

21(2):405-413.

Rohde, David W. 1972. "Policy Goals and Opinion Coalitions in the Supreme Court." *Midwest Journal of Political Science* 16:208-224.

(The Opinion Writing Process)

Wahlbeck, Paul J., James F. Spriggs, and Forrest Maltzman. 1998. "Marshalling the Court: Bargaining and Accommodation on the United States Supreme Court." *American Journal of Political Science Review* 42:294-315.

Spriggs, James F., II, Forrest Maltzman, and Paul J. Wahlbeck. 1999. "Bargaining on the U.S. Supreme Court: Justices' Responses to Majority Opinion Drafts." *Journal of Politics* 61(2):485-506.

Week 7 – Mar. 3 - STRATEGIC 2 - SOP games –
Required reading:

Langer (2002), *Judicial Review in State Supreme Courts*

Mishler, William, and Reginald S. Sheehan. 1993. "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87:87-101.

Stimson, James A., Michael B. MacKuen, and Robert S. Erikson. 1995. "Dynamic Representation." *American Political Science Review* 89:543-565.

Other Important Literature on Strategic Approaches

Schwartz, Edward P. 1992. "Policy, Precedent, and Power: A Positive Theory of Supreme Court Decision-making." *Journal of Law, Economics, and Organization* 8:219-252.

Helmke, Gretchen. 2002. The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy. *American Political Science Review*, 96 (2): 291-304.

Tate, C. Neal and Stacia L. Haynie. 1993. Authoritarianism and the Functions of Courts: A Time Series Analysis of the Philippine Supreme Court. *Law & Society Review* 27:707-40.

Songer, Donald R., Martha Ginn and Tammy Sarver. "Do Judges Follow the Law When There is No Fear of Reversal?" *Justice System Journal* 24:137-161 (2003, #2)

Wahlbeck, Paul J. 1997. "The Life of the Law: Judicial Politics and Legal Change." *Journal of Politics* 59(3):778-802.

Spriggs, James F., II, and Thomas G. Hansford. 2001. "Explaining the Overruling of U.S. Supreme Court Precedent." *Journal of Politics* 63(4):1091-1111.

(SOP Games)

Gely, Rafael, and Pablo T. Spiller. 1990. "A Rational Choice Theory of Supreme Court Statutory Decisions with Applications to the *State Farm* and *Grove City* Cases." *Journal of Law, Economics, and Organization* 6:263-300.

Gely, Rafael, and Pablo T. Spiller. 1992. "The Political Economy of Supreme Court Constitutional Decisions: The Case of Roosevelt's Court-Packing Plan." *International Review of Law and Economics* 12:45-67."

- Segal, Jeffrey A. 1997. "Separation-of-Powers Games in Positive Theory of Congress and Courts." *American Political Science Review* 91:28-44.
- Eskridge, William N., Jr. 1991. "Overriding Supreme Court Statutory Interpretation Decisions." *Yale Law Journal* 101:331-455.
- Eskridge, William N. 1991. "Reneging on History? Playing the Court/Congress/President Civil Rights Game." *California Law Review* 79:613-684.
- Hansford, Thomas G., and David F. Damore. 2000. "Congressional Preferences, Perceptions of Threat, and Supreme Court Decision Making." *American Politics Quarterly* 28(4):490-510.
- Hausegger, Lori, and Baum, Lawrence. 1999. "Inviting Congressional Action: A Study of Supreme Court Motivations in Statutory Interpretation." *American Journal of Political Science* 43(1):162-185.
- Ignagni, Joseph, and James Meernik. 1994. "Explaining Congressional Attempts to Reverse Supreme Court Decisions." *Political Research Quarterly* 47(2):353-371.
- Martin, Andrew D. 2001. "Congressional Decision Making and the Separation of Powers." *American Political Science Review* 95(2):361-378.
- Rogers, James R. 1999. "Legislative Incentives and Two-Tiered Judicial Review: A Game Theoretic Reading of *Carolene Products* Footnote Four." *American Journal of Political Science* 43(4):1096-1121.
- Rogers, James R. 2001. "Information and Judicial Review: A Signaling Game of Legislative-Judicial Interaction." *American Journal of Political Science* 45(1):84-99.
- Rogers, James R, and Georg Vanberg. 2002. "Judicial Advisory Opinions and Legislative Outcomes in Comparative Perspective." *American Journal of Political Science* 46(2):379-397.
- Spiller, Pablo T., and Rafael Gely. 1992. "Congressional Control or Judicial Independence: The Determinants of U.S. Supreme Court Labor Relations Decisions, 1949-1988." *RAND Journal of Economics* 23:463-492.
- Spiller, Pablo T., and Emerson H. Tiller. 1996. "Invitations to Override: Congressional Reversals of Supreme Court Decisions." *International Review of Law and Economics*
- Spiller, Pablo T., and Matthew L. Spitzer. 1992. "Judicial Choice of Legal Doctrines." *Journal of Law, Economics, and Organization* 8:8-45.

(March 10 – No class - Spring Break)

**Week 8- Mar. 17- AUDIENCES –
Required reading:**

Baum (2006), *Judges and their Audiences*

Other Important Literature at least tangentially related to audiences

(Litigants & Lawyers)

- Songer, Donald R., and Reginald S. Sheehan. 1992. "Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals." *American Journal of Political Science* 36:235-58.
- Songer, Donald R., Charles M. Cameron, and Jeffrey A. Segal. 1995. "An Empirical Test of the Rational-Actor Theory of Litigation." *Journal of Politics* 57:1119-1129.
- McGuire, Kevin T. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *Journal of Politics* 57(1):187-196.
- Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." *Law and Society* 9(1):95-160.
- McGuire, Kevin T. 1993. "Lawyers and the U.S. Supreme Court: The Washington Community and Legal Elites." *American Journal of Political Science* 37:365-390.
- Sheehan, Reginald S., William Mishler, and Donald R. Songer. 1992. "Ideology, Status, and the Differential Success of Direct Parties Before the Supreme Court." *American Political Science Review* 86:464-471.
- Haynie, Stacia L. 1994. "Resource Inequalities and Litigation Outcomes in the Philippine Supreme Court." *Journal of Politics*, 56:752-772.
- Kritzer, Herbert M. 2003. "The Government Gorilla: Why Does Government Come Out Ahead in Appellate Courts?" In Kritzer and Silbey, *In Litigation*, pp. 342-370.
- Kritzer, Herbert M. and Susan Silbey, eds. 2003. *In Litigation: Do the "Haves Still Come Out Ahead"?* Stanford: Stanford University Press.
- Songer, Donald R. and Reginald S. Sheehan. 1992. "Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals." *American Journal of Political Science* 36:235-58.
- Songer, Donald R., Reginald S. Sheehan, and Susan Brodie Haire. 1999. "Do the 'Haves' Come Out Ahead over Time? Applying Galanter's Framework to Decisions of the U.S. Courts of Appeals, 1925-1988" *Law and Society Review* 33:811-32.
- Wheeler, Stanton, Bliss Cartwright, Robert Kagan, and Lawrence Friedman. 1987. "Do the Haves Come Out Ahead? Winning and Losing in State Supreme Courts, 1870-1970." *Law and Society Review* 21: 403-445.

Week 9- Mar. 24 - JUDICIAL SELECTION –

Required reading:

- Moraski, Byron J., 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.**
- Segal, Jeffrey A., Charles M. Cameron, and Albert D. Cover. 1992. "A Spatial Model of Roll Call Voting: Senators, Constituents, Presidents, and Interest Groups in Supreme Court Confirmations." *American Journal of Political Science* 36(1):96-121.**

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(The Selection of Federal Judges)

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- Caldeira, Gregory A., and Charles E. Smith, Jr. 1996. "Campaigning for the Supreme Court: The Dynamics of Public Opinion on the Thomas Nomination." *Journal of Politics* 58(3):655-681.
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- Flemming, Roy B., Michael MacCleod, and Jeffery Talbert. 1998. "Witnesses at the Confirmations? The Appearance of Organized Interests at Senate Hearings of Federal Judicial Appointments, 1945-1992." *Political Research Quarterly* 51(3):617-631.

- Giles, Micheal W., Virginia A. Hettinger, and Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54(3): 623-642.
- Gimpel, James G., and Robin M. Wolpert. 1996. "Opinion Holding and Public Attitudes Toward Controversial Supreme Court Nominees." *Political Research Quarterly* 49(1):163-176.
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(The Selection of State Judges)

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(*Judicial Retirements*)
- Barrow, Deborah J., and Gary Zuk. 1990. "An Institutional Analysis of Turnover in the Lower Federal Courts, 1900-1987." *Journal of Politics* 52:457-476.
- Nixon, David C., and J. David Haskin. 2000. "Judicial Retirement Strategies: The Judge's Role in Influencing Party Control of the Appellate Courts." *American Politics Quarterly* 28(4):458-489.
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(Presidential Appointment Effects)

- Alumbaugh, Steve, and C.K. Rowland. 1990. "The Links Between Platform-Based Appointment Criteria and Trial Judges' Abortion Judgments." *Judicature* 74:153-162.
- Gates, John B., and Jeffrey E. Cohen. 1989. "Presidential Policy Preferences and

- Supreme Court Appointment Success.” *Policy Studies Review* 8(4):800-811.
- Gottschall, Jon. 1986. “Reagan’s Appointments to the U.S. Courts of Appeals: The Continuation of A Judicial Revolution.” *Judicature* 70(1):48-54.
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- Songer, Donald R., and Martha Humphries Ginn. 2002. “Assessing the Impact of Presidential and Home State Senator Influences on Judicial Decisionmaking in the United States Courts of Appeals.” *Political Research Quarterly* 55(2):299-328.
- Songer, Donald R. and Susan Johnson. “The Influence of Presidential Versus Home State Senatorial Preferences on the Policy Output of Judges on the United States District Courts.” *Law and Society Review* 36:657-676
- Kuersten, Ashlyn and Donald R. Songer. “Presidential Success through Appointments to the United States Courts of Appeals” *American Politics Research* 31: 107-137 (March 2003)

Week 10 – Mar. 31 - **JUDICIAL IMPACT/ POLICY MAKING** – OR **AGENDA SETTING**

Required reading:

Rosenberg, Gerald. (1991). *The Hollow Hope*. Chicago: University of Chicago Press. Chapters 1-9.

OR

Perry, H.W. (1991). *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Cambridge, MA: Harvard University Press.

Other Important Literature on Impact or Policy Making

- Gryski, Gerard S., Gary Zuk, and Deborah J. Barrow. 1994. “A Bench That Looks Like America? Representation of African Americans and Latinos on the Federal Courts.” *Journal of Politics* 56:1076-86.
- Marshall, Thomas R. 1993. “Symbolic versus Policy Representation on the U.S. Supreme Court.” *Journal of Politics* 55:140-150.
- Segal, Jennifer A. 2000. “Representative Decision Making on the Federal Bench: Clinton’s District Court Appointees.” *Political Research Quarterly* 53(1):137-

(Impact)

- Baum, Lawrence. 1980. "Responses of Federal District Judges to Court of Appeals Policies: An Exploration." *Western Political Quarterly* 33:217-224.
- Baum, Lawrence. 1994. "Specialization and Authority Acceptance: The Supreme Court and Lower Federal Courts." *Political Research Quarterly* 47(3):693-703.
- Benesh, Sara C., and Malia Reddick. 2002. "Overruled: An Event History Analysis of Lower Court Reaction to Supreme Court Alteration of Precedent." *Journal of Politics* 64(2):534-550.
- Johnson, Charles A. 1979. "Lower Court Reactions to Supreme Court Decisions: A Quantitative Examination." *American Journal of Political Science* 23:792-804.
- Johnson, Charles A. 1987. "Law, Politics, and Judicial Decision Making: Lower Federal Court Uses of Supreme Court Decisions." *Law and Society Review* 21(2):325-340.
- Johnson, Charles A. and Bradley C. Canon. 1999. *Judicial Policies: Implementation and Impact*. Second edition. Washington, DC: CQ Press
- Songer, Donald R. 1987. "The Impact of the Supreme Court on Trends in Economic Policy Making in the United States Courts of Appeal." *Journal of Politics* 49:830-841.
- Songer, Donald R. 1988. "Alternative Approaches to the Study of Judicial Impact: Miranda in Five State Courts." *American Politics Quarterly* 16:425-444.
- Songer, Donald R., and Reginald S. Sheehan. 1990. "Supreme Court Impact on Compliance and Outcomes: Miranda and New York Times in the United States Courts of Appeals." *Western Political Quarterly* 43:297-316.
- Spriggs, James F., II. 1997. "Explaining Federal Bureaucratic Compliance with Supreme Court Opinions." *Political Research Quarterly* 50:567-593.

(Agenda Setting)

- Baird, Vanessa.. 2006. *Answering the Call of the Court: How Justices & Litigants Set the Supreme Court Agenda* (Univ of Virginia Press)
- Tanenhaus, Joseph, Marvin Schick, Matthew Muraskin, and Daniel Rosen. 1963. "The Supreme Court's Certiorari Jurisdiction: Cue Theory." In *Judicial Decision Making*, ed. Glendon Schubert. New York: Free Press.
- Caldeira, Gregory A., and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82(4):1109-1127.
- Caldeira, Gregory A., John R. Wright, and Christopher J. W. Zorn. 1999. "Sophisticated Voting and Gate-Keeping in the Supreme Court." *Journal of Law, Economics, & Organization* 15(3):549-572.
- Cameron, Charles M, Jeffrey A. Segal, and Donald R. Songer. 2000. "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions." *American Political Science Review* 94(1):101-116.
- Pacelle, Richard L. 1991. *The Transformation of the Supreme Court's Agenda*. San Francisco: Westview Press. Chapters 1 and 2.

- Boucher, Robert L., and Jeffrey A. Segal. 1995. "Supreme Court Justices as Strategic Decision Makers: Aggressive Grants and Defensive Denials on the Vinson Court." *Journal of Politics* 57:824-837.
- Brenner, Saul, and John F. Krol. 1989. "Strategies in Certiorari Voting on the United States Supreme Court." *Journal of Politics* 51:828-840.
- Caldeira, Gregory A., and John R. Wright. 1990. "The Discuss List: Agenda Building in the Supreme Court." *Law & Society Review* 24(3):807-836.
- Krol, John F., and Saul Brenner. 1990. "Strategies in Certiorari Voting on the United States Supreme Court: A Reevaluation." *Western Political Quarterly* 43:335-342.
- McGuire, Kevin T., and Gregory A. Caldeira. 1993. "Lawyers, Organized Interests, and the Law of Obscenity: Agenda Setting in the Supreme Court." *American Political Science Review* 87(3):717-726.
- Ulmer, S. Sidney. 1984. "The Supreme Court's Certiorari Decisions: Conflict as a Predictive Variable." *American Political Science Review* 78:901-911.

(Issue Fluidity)

- Epstein, Lee, Jeffrey A. Segal, and Timothy Johnson. 1996. "The Claim of Issue Creation on the U.S. Supreme Court." *American Political Science Review* 90:845-852.
- McGuire, Kevin T., and Barbara Palmer. 1995. "Issue Fluidity on the U.S. Supreme Court." *American Political Science Review* 89:691-702.
- McGuire, Kevin T., and Barbara Palmer. 1996. "Issues, Agendas, and Decision Making on the Supreme Court." *American Political Science Review* 90:853-865.

(Interest Groups)

- Cortner, Richard C. 1968. "Strategies and Tactics of Litigants in Constitutional Cases." *Journal of Public Law* 17:287-307.
- Epstein, Lee, and C.K. Rowland. 1991. "Debunking the Myth of Interest Group Invincibility in the Courts." *American Political Science Review* 85(1):205-217.
- Songer, Donald, Ashlyn Kuersten, and Erin Kaheny. 2000. "Why the Haves Don't Always Come Out Ahead: Repeat Players Meet Amici Curiae for the Disadvantaged." *Political Research Quarterly* 53(3):537-556.
- Spriggs, James F., and Paul J. Wahlbeck. 1997. "Amicus Curiae and the Role of Information at the Supreme Court." *Political Research Quarterly* 50:365-386.
- Barker, Lucius J. 1967. "Third Parties in Litigation: A Systematic View of the Judicial Function." *Journal of Politics* 29:41-69.
- Caldeira, Gregory A., and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82(4):1109-1127.
- Caldeira, Gregory A., and John R. Wright. 1990. "Amici Curiae before the Supreme Court: Who Participates, When, and How Much?" *Journal of Politics* 52:782-806.
- Epstein, Lee. 1985. *Conservatives in Court*. Knoxville, TN: The University of Tennessee Press.
- Epstein, Lee. 1993. "Interest Group Litigation During the Rehnquist Court Era." *Journal of Law and Politics* 9:639-717.

- Epstein, Lee. 1994. "Exploring the Participation of Organized Interests in State Court Litigation." *Political Research Quarterly* 47(2):335-351.
- Epstein, Lee, and Jack Knight. 1999. "Mapping Out the Strategic Terrain: The Informational Role of *Amici Curiae*." In *Supreme Court Decision-Making: New Institutional Approaches*, ed., Cornell W. Clayton and Howard Gillman. Chicago: University of Chicago Press.
- O'Connor, Karen. 1980. *Women's Organizations' Use of the Courts*. Lexington, MA: Lexington Books.
- O'Connor, Karen, and Lee Epstein. 1981-82. "Amicus Curiae Participation in U.S. Supreme Court Litigation: An Appraisal of Hakman's 'Folklore.'" *Law & Society Review* 16(2):311-320.
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- Songer, Donald R., and Ashlyn Kuersten. 1995. "The Success of Amici in State Supreme Courts." *Political Research Quarterly* 48(1):31-42.
- Songer, Donald, Ashlyn Kuersten, and Erin Kaheny. 2000. "Why the Haves Don't Always Come Out Ahead: Repeat Players Meet Amici Curiae for the Disadvantaged." *Political Research Quarterly* 53(3):537-556.
- Songer, Donald R., and Reginald S. Sheehan. 1993. "Interest Group Success in the Courts: Amicus Participation in the Supreme Court." *Political Research Quarterly* 46:339-354.
- Spriggs, James F., and Paul J. Wahlbeck. 1997. "Amicus Curiae and the Role of Information at the Supreme Court." *Political Research Quarterly* 50:365-386.
- Vose, Clement E. 1959. *Caucasians Only: The Supreme Court, The NAACP, and the Restrictive Covenant Cases*. Berkeley, CA: University of California Press.

(public opinion)

- Mishler, William, and Reginald S. Sheehan. 1993. "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87:87-101.
- Norpoth, Helmut, and Jeffrey A. Segal. 1994. "Popular Influence on Supreme Court Decisions." *American Political Science Review* 88:711-724.
- Franklin, Charles H., and Liane C. Kosaki. 1989. "Republican Schoolmaster: The U.S. Supreme Court, Public Opinion, and Abortion." *American Political Science Review* 83:751-771.
- (The Effect of Public Opinion on Judicial Behavior)

- Link, Michael W. 1995. "Tracking Public Mood in the Supreme Court: Cross-Time Analyses of Criminal Procedure and Civil Rights Cases." *Political Research Quarterly* 48(1):61-78.
- Marshall, Thomas R. 1989. *Public Opinion and the Supreme Court*. Boston: Unwin Hyman.
- Mishler, William, and Reginald S. Sheehan. 1996. "Public Opinion, the Attitudinal Model, and Supreme Court Decision Making: A Micro-Analytic Perspective." *Journal of Politics* 58(1):169-200.
- Stimson, James A., Michael B. MacKuen, and Robert S. Erikson. 1995. "Dynamic Representation." *American Political Science Review* 89:543-565.

Caldeira, Gregory A. 1987. "Public Opinion and the U.S. Supreme Court: FDR's Court-Packing Plan." *American Political Science Review* 81:1139-1153.
(Perceptions of Judicial Legitimacy)

Caldeira, Gregory A. 1986. "Neither the Purse Nor the Sword: Dynamics of Public Confidence in the Supreme Court." *American Political Science Review* 80(December):1209-1226.

Caldeira, Gregory A., and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36:635-664.

Gibson, James L., Gregory A. Caldeira, and Vanessa A. Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92(2):343-358.

Weeks 11- 14 – Student Presentations

Presentations based on student research papers
Each student will make a 10 minute presentation based on part of their research paper each of the last four weeks of the semester, followed by about 20 minutes of discussion of that presentation. Specific parts of the research paper to be presented indicated for each week.

Week 11- April 7 – Student Presentations

1- Research question & theory & answer to "so what?" question
Email draft of first 2-4 pages of your paper to all in class in advance

Week 12- April 14 – Student Presentations

Presentations based on student research papers
2. Research design & Methods
Email draft of your methods & data section to all in class in advance.

Week 13- April 21 – Student Presentations

Presentations based on student research papers
3. Overview of Results
Email draft of your tables and results section to all in class in advance.

Week 14- April 28 – Student Presentations

Presentations based on student research papers
4. Conclusions, implications for future research

Email draft of your conclusions and/or discussion sections to all in class in advance.