

POLS 4023  
**Judicial Politics**  
Fall 2014

Professor: Dr. Matthew P. Hitt  
Classroom: 0228 Tureaud Hall  
Class Time: 3:00 – 4:20 p.m., Tuesdays and Thursdays  
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**COURSE DESCRIPTION:**

This course will introduce students to the judicial process within the American governmental system. Additionally, this course serves as an introduction to political science scholarship on law and courts. Students will study the organization of courts, the individuals involved in the judicial arena, and the structure of the legal system, including trial and appellate courts. The course will focus on the relationship of politics to the behavior of judges, and to the structure and functioning of courts.

**COURSE OBJECTIVES:**

Students will learn most importantly that judges are political actors and that courts are policy-making bodies. Students will gain an understanding about the structures and processes of court systems. Students will be able to critically evaluate the American judicial system and will demonstrate analytical skills through both written and spoken communication exercises.

**TEXTBOOK:**

Baum, Lawrence. 2013. American Courts: Process and Policy, 7th Edition. Cengage Learning.  
ISBN-13: 9780495916376.

**COURSE REQUIREMENTS:**

Students are required to read the assignments, be prepared for discussion, attend class on time and for the duration of the class and participate in class discussions. Two examinations will be given. The exams will be some combination of multiple choice and short answer. The second (final) exam will not be a cumulative examination. Makeup examinations will be only for university excused absences or for those absences necessitated by a legitimate and documented illness. Students must adhere to the Code of Student Conduct.

## ASSIGNMENTS:

There are five required writing assignments in this class. All papers are to be double-spaced, in 12 point Times New Roman font, with 1 inch margins. Over the course of the term, students will be required to complete four short (1-2 page) response papers to an article assigned in the class, uploaded in PDF format to Moodle by 11:55 p.m. on the due date. These response papers should summarize the chosen article's motivating question, the theory motivating the hypotheses, the hypotheses themselves, the data, the method of analysis, and the conclusions of the authors. These response papers should also make reference to any unanswered questions suggested by the research that you yourself might develop into a research paper of your own.

**If Moodle crashes or fails to upload your paper, it is your responsibility to immediately email me ([mhitt2@lsu.edu](mailto:mhitt2@lsu.edu)) with your paper attached before the cutoff time of 11:55 p.m. to receive credit.**

Response papers will be graded on the following scale: ✓+, ✓, and ✓-, where ✓+ corresponds to 25 points out of 25, ✓ corresponds to 20 points out of 25, and ✓- corresponds to 15 points out of 25. For research papers, a ✓+ mark will be given for work that meets all requirements, and displays sufficient mastery of the literature being discussed, along with high-quality writing and argumentation. A ✓ mark will be given for papers that meet all minimum requirements, but contain errors in writing or interpretation of the literature discussed. A ✓- mark will be given for papers that fail to meet the minimum requirements in one or more ways, but still demonstrate a meaningful effort to complete the assignment.

Students will also be required to complete an 8-10 page research paper posted in PDF format to Moodle by 11:55 p.m. on the due date. The research paper must include in-text citations with works cited at the end, in APA format. Works cited do not count towards the page length guidelines. Any material over the maximum allowable page length will not be graded. Students' research papers should be an extension of one of the short response papers from during the term. Attached is a list of possible topics with an associated data source and bibliographies. Each student may select **one** of the topics and find at least **four appropriate additional sources. If you choose to write on a different topic, you must email your topic with 9 sources to me no later than 10/28/14; off-list topics are subject to the instructor's approval.** Papers must include some form of quantitative data in support of the paper's scholarly argument. Students may produce a simple table of percentages, a plot or bar chart, or some other form of descriptive data can be referenced in the text in support of one or more points made. Alternatively, students may cite quantitative findings from appropriate scholarly works. Scholarly research articles, but **not** textbooks, are acceptable sources. Students may, and are indeed encouraged, to use material from the textbook and readings in class, but these **do not** count as additional sources.

Students who turn in response papers late will receive no credit. Late research papers will be penalized 10 points for **each 24-hour (or less) period** beyond the deadline. The two exams are worth **100 points** each. The research paper is also worth **100 points**; a detailed rubric for its grading will be released early in the semester. Each response paper is worth **25 points**. Grades are based on the following scale:

360-400=A  
320-359=B  
280-319=C

240-279=D  
Below 239=F

### **EXTRA CREDIT POLICY:**

I do not offer traditional extra credit. Because not all students feel comfortable asking for extra credit, giving extra credit to some students and not others leads to inequalities in grades unrelated to merit. Further, allowing an extra credit assignment that some students with jobs or families may not have time to complete also disadvantages some students, again leading to grade inequalities unrelated to merit. However, I recognize that life happens, assignments and tests don't always go as planned, and that some (hopefully very few) of my test questions might be overly difficult or unfairly tricky. As such, I will give *every student* a 14 point extra credit bonus at the end of the semester. This bonus is equivalent to going from, for instance, a high B to a low A, and serves as my way of giving every student the benefit of the doubt on issues of grading.

### **ACADEMIC HONESTY:**

I expect all of the work you do in this course to be your own. No dishonest practices on the examinations or assignments or in the course will be acceptable, and any suspected cases of dishonesty will be reported to the university committee on academic misconduct and handled according to university policy. The quizzes and exams are to be taken during the allotted time period without the aid of books, notes, or other students. All assignments are to be completed independently.

### **STUDENT SUPPORT AND SUCCESS:**

I want every student in this class to succeed. My goal as your instructor is to put every student in a position to master the material and earn an excellent grade in this course. To that end, it is my aim to be as accessible as possible. Please do not hesitate to visit my office hours, or schedule an appointment to see me, if you have any questions, concerns, or difficulties regarding the course.

Further, there are excellent resources on this campus to help you succeed academically and personally. The Center for Academic Success (<http://cas.lsu.edu>) can provide academic guidance and tutoring. The LSU writing center in 151 Coates Hall (<http://sites01.lsu.edu/wp/cxc/writing/>) can aid you with the written assignments in this class. The University Career Center (<http://students.lsu.edu/careercenter>) can aid you with job and post-graduation questions. Finally, LSU CARES (<http://studentlife.lsu.edu/lsu-cares>) provides support for physical and mental health, and is a great resource for issues of anxiety and depression. These resources exist only to help you succeed at LSU and you should feel welcome to take advantage of them.

### **DISABILITY:**

If you need an accommodation based on the impact of a disability, you should contact me to arrange an appointment as soon as possible. At the appointment we can discuss the course format, anticipate your needs, and explore potential accommodations. I rely on the Office for Disability Services for assistance in verifying the need for accommodations and developing accommodation strategies. If you have not previously contacted the Office for Disability Services, I encourage you to do so.

## TENTATIVE COURSE OUTLINE

### Date Topic Reading Assignment

August 26-28: Introduction/Overview

Required: <http://svmiller.com/blog/2014/08/reading-a-regression-table-a-guide-for-students/>

Recommended: Baum, *American Courts*, Preface and Chapter 1

September 2-4: Court Organization

Required: Miller, Banks and Brett Curry. 2013. "Experts Judging Experts: The Role of Expertise in Reviewing Agency Decision Making." *Law & Social Inquiry* 38(1): 55-71.

Recommended: Baum, *American Courts*, Chapter 2

September 9-11: Lawyers

Required: Belton, Ian K., Mary Thomson, and Mandeep K. Dhimi. 2014. "Lawyer and Nonlawyer Susceptibility to Framing Effects in Out-of-Court Civil Litigation Settlement." *Journal of Empirical Legal Studies* 11(3): 578-600.

Recommended: Baum, *American Courts*, Chapter 3;

September 16-18: Selection of Judges (Lower Federal and State Courts)

Required: Canes-Wrone, Brandice, Tom S. Clark, and Jason P. Kelly. 2014. "Judicial Selection and Death Penalty Decisions." *American Political Science Review* 108(1): 23-39.

Recommended: Baum, *American Courts*, Chapter 4

September 18: **Response Paper #1 Due**

September 23-25: Judges

Required: Baum, Lawrence. 1994. "What Judges Want: Judges' Goals and Judicial Behavior." *Political Research Quarterly* 47(3): 749-768.

Required: Wold, John T. and Greg A. Caldeira. 1980. "Perceptions of 'Routine' Decision-Making in Five California Courts of Appeal." *Polity* 13(2): 334-347.

Recommended: Baum, *American Courts*, Chapter 5

September 30 & October 7: Criminal Trial Courts

Required: Danziger, Shai, Jonahtan Levav, and Liora Avnaim-Pesso. 2011. "Extraneous Factors in Judicial Decisions." *Proceedings of the National Academy of Sciences* 108(17): 6889-6892.

Required: Gordon, Sanford C. and Gregory A. Huber. 2007. "The Effect of Electoral Competitiveness on Incumbent Behavior." *Quarterly Journal of Political Science* 2 (2): 107-138.

Recommended: Baum, *American Courts*, Chapter 6

October 2: **NO CLASS**

October 9: **Midterm Exam**

October 14-16: Civil Trial Courts

Required: Mnookin, Robert H. and Lewis Kornhauser. 1979. "Bargaining in the Shadow of the Law: The Case of Divorce." *The Yale Law Journal* 88(5): 950-997.

Recommended: Baum, *American Courts*, Chapter 7

October 16: **Response Paper #2 Due**

October 21-23: Appellate Courts

Required: Songer, Donald R. and Martha Humphries Ginn. 2002. "Assessing the Impact of Presidential and Home State Influences on Judicial Decisionmaking in the United States Courts of Appeals." *Political Research Quarterly* 55(2): 299-328.

Recommended: Baum, *American Courts*, Chapter 8

October 28-30: Working with data for your research paper

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

November 4-6: Supreme Court Appointments

Required: Johnson, Timothy R. and Jason M. Roberts. 2004. "Presidential Capital and the Supreme Court Confirmation Process." *The Journal of Politics* 66(3): 663-683.

Required: 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(4): 1069-1095.

November 6: **Response Paper #3 Due**

November 11-13: Supreme Court Case Selection

Required: Clark, Tom S. and Jonathan P. Kastellec. 2013. "The Supreme Court and Percolation in the Lower Courts: An Optimal Stopping Model." *The Journal of Politics* 75(1): 150-168.

Required: 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, and Organization* 15(3): 549-572.

November 18-20: Supreme Court Decision Making

Required: Bartels, Brandon L. 2009. "The Constraining Capacity of Legal Doctrine on the U.S. Supreme Court." *American Political Science Review* 103(3): 474-495.

Required: Segal, Jeffrey A. and Harold J. Spaeth. 1996. "The Influence of Stare Decisis on the Votes of United States Supreme Court Justices." *American Journal of Political Science* 40(4): 971-1003.

November 25: External Influences on Supreme Court Decision Making

Required: Casillas, Christopher J., Peter K. Enns, and Patrick C. Wohlfarth. 2011. "How Public Opinion Constrains the U.S. Supreme Court." *American Journal of Political Science* 55(1): 74-88.

November 25: **Response Paper #4 Due**

November 27: **NO CLASS, HAPPY THANKSGIVING!**

December 2: **Research Paper Due**

December 2-4: The Impact of the Supreme Court

Required: Hall, Matthew E.K. 2014. "Testing Judicial Power: The Influence of the U.S. Supreme Court on Federal Incarceration." *American Politics Research*, Forthcoming.

Required: Baum, Lawrence. 2003. "The Supreme Court in American Politics." *Annual Review of Political Science* 6: 161-180.

Thursday, December 9: **Final Exam** – 3:00 pm

## Topics for Research Papers POLI 4023

### Plea Bargaining

- Brereton, David and Jonathan D. Casper. 1981. "Does It Pay to Plead Guilty?" *Law and Society Review* 16:45-69.
- Valdes, Stephen. 2005. "Frequency and Success: An Empirical Study of Criminal Law Defenses, Federal Constitutional Evidentiary Claims, and Plea Negotiations." *University of Pennsylvania Law Review*. 153:1709-1814.
- LaFree, G. D. 1985. "Adversarial and Nonadversarial Justice: A Comparison of Guilty Pleas and Trials." *Criminology*, 23, 289-312.
- Viljoen, Jodi, Jessica Klaver, and Ronald Roesch. 2005. "Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals." *Law and Human Behavior*. 29:253-277.
- Starr, Sonja B and Rehavi M. Marit. 2013. "Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of *Booker*." *Yale Law Journal*. 123-2-80.
- Sherod, Thaxton. 2013. "Leveraging Death." *Journal of Criminal Law and Criminology*. 103:475-552.

### Prosecutorial Discretion

- Ball, Jeremy D. 2006. "Is It a Prosecutor's World? Determinants of Count Bargaining Decisions." *Journal of Contemporary Criminal Justice*. 22:241-260.
- Frohmann, Lisa. 1997. "Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decisionmaking." *Law and Society Review* 31:531-555.
- Engen, Rodney L. and Sara Steen. "The Power to Punish: Discretion and Sentencing Reform in the War on Drugs." *American Journal of Sociology* 105:1357-1395.
- Wilmot, K. A., & Spohn, C. (2004). "Prosecutorial discretion and real-offense sentencing: An analysis of relevant conduct under the federal sentencing guidelines." *Criminal Justice Policy Review*. 15: 324-343.
- Haynie, Stacia L. and Ernest Dover. 1994. "Prosecutorial Discretion and the Decision to Try the Case." *American Politics Quarterly*. 22:370-381.
- Burke, Alafair S. 2007. "Prosecutorial Passion, Cognitive Bias, and Plea Bargaining." *Marquette Law Review*. 91:183-211.

### Income, Media and Other Effects in Crime Disposition

- Albonetti, Celesta A. 1997 "Sentencing Under the Federal Sentencing Guidelines: Effects of Defendant Characteristics." *Law and Society Review* 31:789-822.
- Steffensmeier, Darrell and Stephen Demuth. 2000. "Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?" *American Sociological Review*. 65:705-729.
- Mustard, David B. 2001. "Racial, Ethnic, and Gender Disparities in Sentencing: Evidence from the U.S. Federal Courts." *Journal of Law and Economics*. 44:285-314
- Helms, Ronald and David Jacobs. "The Political Context of Sentencing: An Analysis of Community and Individual Determinants." *Social Forces*. 81:577-604.
- Haynie, Stacia L. and Ernest Dover, "Prosecutorial Discretion and the Decision to Try the Case." *American Politics Quarterly*. 1994. 22:370-381.

Schneider, Sydney. 2013. *Journal of Criminal Law & Criminology*. 103:279-308.

## **Juries**

York, Erin and Benjamin Cornwell. 2006. "Status on Trial: Social Characteristics and Influence in the Jury Room." *Social Forces*. 85:455-477.

Denove, Chris F. and Edward J. Imwinkelried. 1995. "Jury Selection: An Empirical Investigation of Demographic Bias." *American Journal of Trial Advocacy* 19: 285-341.

Garvey, Stephen P. Sheri Lynn Johnson and Paul Marcus. 2000. "Correcting Deadly Confusion: Responding to Jury Inquiries in Capital Cases." *Cornell Law Review* 85:627-655.

Hastie, Reid, David A. Schkade, and John W. Payne. A Study of Juror and Jury Judgments in Civil Cases: Deciding Liability for Punitive Damages." *Law and Human Behavior*. 22:287-314.

Oppenheimer, David B. 2003. "Verdicts Matter: An Empirical Study of California Employment Discrimination and Wrongful Discharge Jury Verdicts Reveals Low Success Rates for Women and Minorities?" *University of California Davis Law Review*. 37:511-566.

Bowers, William J. 1996. "The Capital Jury: Is It Tilted Toward Death?" *Judicature*. 79:220,222-223.

## **Judicial Elections**

Bonneau, Chris W. 2007. "The Effects of Campaign Spending in State Supreme Court Elections." *Political Research Quarterly*. 60:489-499.

Hall, Melinda Gann. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." 95:315-330.

Sheldon, Charles H., and Nicholas P. Lovrich, Jr. 1999. "Voter Knowledge, Behavior and Attitudes in Primary and General Elections." *Judicature*. 82:216-223.

Ashenfelter, Orley, Theodore Eisenberg, and Stewart J. Schwab. 1995. "Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes." *Journal of Legal Studies*. 24:257-281.

Kimel, T. J. and Kirk A. Randazzo. 2012. "Shaping the Federal Courts: The Obama Nominees." *Social Science Quarterly*. 93:1243-1250.

## **Resources, Courts and Winners and Losers**

Atkins, Burton M. 1991. "Party Capability Theory as an Explanation of Intervention Behavior in the English Court of Appeal." *American Journal of Political Science* 35:881-903.

Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." *Law and Society Review* 9:95-160.

Dumas, Tao L. and Stacia L. Haynie. 2012. "Building an Integrated Model of Trial Court Decision Making: Predicting Success and Awards Across Circuits." *State Politics and Policy Quarterly*. 12:103-126.

Farole, Donald J. 1999. "Reexamining Litigant Success in State Supreme Courts." *Law and Society Review*. 33:1043-1058.

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*. 33:811-832.



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.

### **Advocacy and Judicial Behavior**

Johnson, Timothy R., Paul J. Wahlbeck, and James F. Spriggs. 2006. "The influence of oral arguments on the US Supreme Court." *American Political Science Review* 100(1): 99-113.

Lazarus, Richard J. 2007. "Advocacy Matters Before and Within the Supreme Court: Transforming the Court by Transforming the Bar." *The Georgetown Law Journal* 96: 1487-564.

McAtee, Andrea, and Kevin T. McGuire. 2007. "Lawyers, Justices, and Issue Salience: When and How Do Legal Arguments Affect the U.S. Supreme Court?" *Law and Society Review* 41(2): 259-78.

McGuire, Kevin T. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *Journal of Politics* 57(1): 187-96.

McGuire, Kevin T. 1998. "Explaining Executive Success in the U.S. Supreme Court." *Political Research Quarterly* 51(2): 505-26.

Szmer, John, Susan W. Johnson, and Tammy A. Sarver. 2007. "Does the Lawyer Matter? Influencing Outcomes on the Supreme Court of Canada." *Law and Society Review* 41(2): 279-304.

Data sources: <http://mcguire.web.unc.edu/data/>

### **Supreme Court Appointments**

Epstein, Lee, Rene Lindstadt, Jeffrey A. Segal, and Chad Westerland. 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees." *Journal of Politics*, 68(2): 296-307

Giles, Michael, Virginia Hettinger, and Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54(3): 623-641.

Kahn, Michael A. 1995. "The Appointment of a Supreme Court Justice: A Political Process from Beginning to End." *Presidential Studies Quarterly* 25(1): 25-41.

Krehbiel, Keith. 2007. "Supreme Court Appointments as a Move-the-Median Game." *American Journal of Political Science* 51(2): 231-240.

Shipan, Charles R. and Megan L. Shannon. 2003. "Delaying Justice: A Duration Analysis of Supreme Court Confirmations." *American Journal of Political Science* 47(4): 654-668.

Data sources: <http://www.psci.unt.edu/~pmcollins/data.htm> (first two sources)

### **Courts and Interest Groups**

Collins, Paul. 2007. "Lobbyists before the U.S. Supreme Court: Investigating the Influence of Amicus Curiae Briefs." *Political Research Quarterly*. 60:55-70

Epstein, Lee and C. K. Rowland. 1991. "Debunking the Myth of Interest Group Invincibility in the Courts." *American Political Science Review*. 85:205-217.

O'Connor, Karen and Lee Epstein. 1983. "The Rise of Conservative Interest Group Litigation." *Journal of Politics*. 45:479-489.

- 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: 96-121.
- 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.
- Collins, Paul and Wendy L. Martinek. 2010. "Friends of the Circuits: Interest Group Influence on Decision Making in the U.S. Courts of Appeals." *Social Science Quarterly*. 91:397-414.

Data sources: <http://www.psci.unt.edu/~pmcollins/FOSC.htm>

### **Policy Impact of Court Decisions**

- Patton, Dana. 2007. "The Supreme Court and Morality Policy Adoption in the American States: The Impact of Constitutional Context." *Political Research Quarterly*. 60:468-488.
- Berry, Christopher and Charles Wysong. 2012. "Making Courts Matter: Politics and the Implementation of State Supreme Court Decisions." *University of Chicago Law Review*. 79:1-30.
- Songer, Donald 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.
- McGuire, Kevin T. 2009. "Public Schools, Religious Establishments, and the U. S. Supreme Court: An Examination of Policy Compliance." *American Politics Research*. 37:50-74.
- Stoutenborough, James W., Donald P. Haider-Markel, Mahalley D. Allen. "Reassessing the Impact of Supreme Court Decisions on Public Opinion: Gay Civil Rights Cases." *Political Research Quarterly*. 59:419-433.
- Thomas, George C. III and Richard A. Leo. 2002. "The Effects of Miranda v. Arizona: 'Embedded' in Our National Culture?" *Crime and Justice*. 29:203-271.

### **Supreme Court Decision-Making**

- Lindquist, Stefanie A and Rorie Spill Solberg. "Judicial Review by the Burger and Rehnquist Courts: Explaining Justices' Responses to Constitutional Challenges." *Political Research Quarterly*. 60:71-90.
- Corley, Pamela C. 2008. "The Supreme Court and Opinion Content: The Influence of Parties' Briefs." *Political Research Quarterly*. 61:468-478.
- Acker, James R. 1993. "A Different Agenda: The Supreme Court, Empirical Research Evidence, and Capital Punishment Decisions, 1986-1989." *Law and Society Review*. 27:65-88.
- Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model*, Chapter 2. NY: Cambridge University Press. (See me for this.)
- Tate, C. Neal. 1981. "Personal Attribute Models of the Voting Behavior of US Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions, 1946-1978." *American Political Science Review*. 75:355-367.
- 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* 42:294-315.

Data sources: <http://scdb.wustl.edu/>