

Political Science H521
Fall 2007
Mr. Baum

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SUPREME COURT DECISION MAKING

This course is about explanation of decisions made by the U.S. Supreme Court. The focus of the course is a research project. Each student will choose a single case that the Court has accepted for oral argument and decision in the 2007 term and write a paper predicting the positions of three justices in that case. The paper will require integration of what you learn about explanation of Supreme Courts with what you learn about the case and the justices.

The central goal of our readings, class sessions, and preliminary papers is to help you develop the best possible prediction paper. We will work through the three key components of your research and of the prediction paper itself, in the order below.

1. A theory of the Supreme Court. Each prediction paper will begin by laying out a theory of the Court: what factors determine the positions that justices take in cases, and what is their relative importance. There is disagreement among scholars and other people about why the justices do what they do, and we will read articles that take competing positions on this issue. We will discuss the various theories in class sessions as well. Students will then write short papers presenting and justifying their own theories of the Court.

2. The case. The second section of the prediction paper will analyze the issues in the case a student has chosen, in itself and in relation to prior cases. Readings and material presented in class sessions will provide students with the tools to understand Supreme Court cases and to think about the issues in those cases as well as ways to do research on cases. Once students have had a chance to do research on their case, a medium-length paper will present an analysis of the issues in the case.

3. The justices. The third section of the prediction paper will analyze how the three justices a student has chosen could be expected to respond to the case. This part of the paper requires an understanding of the three justices in general and analysis of evidence about the justices' positions on the issues that the Court will address in this specific case. Much of the research on the justices will be based on the Supreme Court Database, which includes detailed data on the Court's past decisions and the votes of the justices in those decisions.

When these three components of the research are completed, students will write the prediction paper. The first two sections will incorporate material in the papers on those topics, revised as needed. The third section and a short final section that presents the paper's predictions will be new to the prediction paper.

Writing a high-quality prediction paper requires students to know a great deal about the Supreme Court, legal analysis, and research methods. Students in the course differ a good deal

in their backgrounds, so some will have a head start. But a lot of what you need to know will be new to nearly everyone. More important, the course is designed to provide you with all the information and skills that you need to succeed, even if you start out knowing nothing about the subject. (If you know very little about the Supreme Court, you may want to read selectively in a textbook about the Court early in the quarter, and I can lend you a textbook.) The tasks you need to accomplish may appear very challenging, but if you make a commitment to the class you will meet those challenges effectively. Don't panic!

Assignments

The course grade will be based on several components, listed below. As you would expect, it is important (and required) that you complete the papers by the time they are due. If you have a problem that requires you to miss a deadline, you must let me know and get permission from me before that deadline.

Theory paper	15%
Case paper	15%
Prediction paper	60%
Class participation	10%

The grading scales will be as follows:

	1st two papers*	Prediction paper	Class	Total
A	12-15	48-60	8-10	80-100
B	9- 11	36-47	6- 7	60- 79
C	6- 8	24-35	4- 5	40- 59

*This is the scale for each of the two papers. The total for the two papers will be this scale multiplied by two.

Scores within 3 points of a dividing line will receive plus or minus grades. Thus 80-82 will be an A-, 77-79 a B+. The percentages required for each grade look low, but they reflect a high standard for evaluation of work in the course. A student who receives 83 points in the course has done excellent work.

I've said a little about the papers already. Let me tell you a bit more about them here (and repeat some of what I've said already) and describe the class participation component of the grade. Later on, I'll give you a lot more information about each of the papers.

1. The **theory paper** is essentially the first draft of the theory section of the prediction paper. It will be based on the arguments and analyses in the readings about Supreme Court decision making and our discussions in class. The paper should present and defend your theory of decision making, which might be one of the theories that scholars have advocated, a mix of

scholars' theories, or something quite different. The paper will be about 5 double-spaced pages long. It is due at the beginning of class on **October 15th**.

2. The **case paper** is essentially the first draft of the case section of the prediction paper. The case paper will be based on your research on the case you have chosen and on related decisions by the Supreme Court and by lower courts (though you probably will do additional research on these matters after you complete this paper). The paper will identify the legal and policy issues in your case, the competing arguments on those issues, and the state of the law on those issues based on prior decisions. The paper will be about 10 double-spaced pages long. It is due at the beginning of class on **November 5th**.

3. As indicated already, the **prediction paper** is the heart of your work in the class. By **October 1st**, each student will give me preferences about the case and the justices that will be the subjects of the paper, and on the basis of those preferences I'll give you the assignments of cases and justices on October 3rd. Guidelines and suggestions for your preferences are on the "Choosing Cases and Justices" handout.

In the paper you will present and justify predictions about the positions that each of your three justices will take when the Court decides the case. These positions include the outcome of the case (who wins) and the legal doctrines or rules that the justice supports. The paper's justification will apply its theory of the Court to relevant information about the case, about past cases involving similar issues, and about the justices.

A few of the cases that the Court has scheduled for argument so far will be decided by the end of the quarter, but the great majority will not. In any event, the papers will be evaluated not according to the accuracy of their predictions but according to how effectively evidence and analysis are mustered to support their predictions.

The prediction paper should be about 25 pages in length. It will be due at **noon** on **November 30th**, and it must be handed in by that time. More details on the content of the paper will be provided early in the quarter, and of course a great deal of material will be presented in class to prepare you for writing the paper.

4. **Class participation** is important, because our success in working through issues and ideas on Supreme Court decision making depends on active involvement by members of the class. Grading will be based on attendance (which includes being at a class session for the full length of time) and contributions to class discussion, with 5 points based on each of those two components. A student who attends nearly all the class sessions and who makes thoughtful contributions to discussion on a fairly regular basis will receive all 10 points. If possible, let me know beforehand if you will not be in class on a particular day.

Required Syllabus Statements

As you know, we are asked to include standard statements on university policies concerning academic honesty and student disabilities on our syllabi (with the statement on disability in a larger font). The statements are below. I should note that because you will be working so much with source materials on topics that are new to you for the prediction paper, there is some potential for inadvertent plagiarism on that paper. Later on, I'll discuss how to avoid that.

Academic Honesty: I expect all of the work you do in this course to be your own. No dishonest practices on the examinations 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.

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.

Consultation and Assistance

As I have said, this is a challenging class, and the prediction paper is especially challenging. Thus it is important that you feel free to check with me and get help whenever you need it. Of course, you're welcome to come in during office hours. The hours are indicated at the top of the syllabus. So that you don't have to wait to see me, I'll use a sign-up sheet, which will go up on my bulletin board each Wednesday for the following Tuesday. Let me know if you'd like to have an appointment outside my office hours, and I can usually arrange a time to meet on short notice. Also feel free to drop me notes by electronic mail. I don't monitor mail in the evenings, but I can usually reply early the next morning. You can also talk with me after class on most days, and we'll have several sessions in which you can consult with me and get help in your research.

Class Schedule by Topic (with readings)

Our schedule will be structured on the basis of the three components of the class that were described at the beginning of the syllabus, preceded by an introductory section. The topics are listed below, along with the readings for each topic. The materials that I call "readings" are a little different from readings in most other classes. Some, including all the readings for section

II, provide background for our discussions of topics in class. Thus they are required. But most of the readings are resources for your work on the prediction paper and the papers that precede it. As resources, they should be used to the extent that they are helpful to you.

Readings and other resources will be posted on the Carmen page for the class. Many readings on this syllabus have been posted already. The course content on Carmen has four sections that correspond to the four sections on the syllabus, followed by a section with websites for your research and a section with electronic reserves.

I'll provide additional readings along the way, and there may be small changes in the subjects of class sessions. (The most likely change is that on one or more days that are set aside for lab work and consultation, we'll use part of the class session to take up specific subjects.) Because the central goal of the class is to help you to write the best possible prediction paper, readings and class sessions will be changed when doing so will provide you with additional help. Let me know when there is a subject that you would like to take up in class in order to get help with an aspect of your work on the papers.

I. Introductory matters

A. Introduction to the course

Readings:

Handout: Choosing cases and justices

B. An overview of the Supreme Court

Readings:

Handout: An introduction to the Supreme Court

C. Reading and responding to scholarly articles

Handout: Writing the theory paper

Handout: Understanding statistical analyses

Susan Harter and Shauna Rienks, "APA Publication Guidelines Mini-Manual"

Writing Center, University of Wisconsin, "APA Documentation"

II. A Theory of the Supreme Court

A. Justices' policy preferences and decisions

Readings:

C. Herman Pritchett, "Divisions of Opinion Among Justices of the U.S. Supreme Court, 1939-1941," American Political Science Review 35 (October 1941), 890-898.

Jeffrey A. Segal, Lee Epstein, Charles M. Cameron, and Harold J. Spaeth, "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited," Journal of Politics 57 (August 1995), 812-823.

B. Law and policy in decisions

Readings:

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

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

Herbert M. Kritzer and Mark J. Richards, "The Influence of Law in the Supreme Court's Search-and-Seizure Jurisprudence," American Politics Research 33 (January 2005), 33-55.

Robert M. Howard and Jeffrey A. Segal, "An Original Look at Originalism." Law and Society Review 36 (2002), 113-134.

C. Strategy and decisions

Readings:

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

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

Timothy R. Johnson, “The Supreme Court, the Solicitor General, and the Separation of Powers,” American Politics Research 31 (July 2003), 426-451.

D. Developing a theory of the Supreme Court

III. The case

A. The decision-making process

Reading:

Handout: Writing the case paper

B. Data sources on cases

Reading:

Handout: Information sources for legal materials

C. Understanding legal briefs and court decisions

Reading:

Materials in Scott v. Harris (2007)

Handout: Citing legal sources

D. Tracking the development of the law

IV. The justices

A. The Supreme Court Database

Readings:

Harold J. Spaeth, The Original United States Supreme Court Judicial Database, 1953-2005 Terms: Documentation (“codebook”)

Sara Benesh, “Becoming an Intelligent User of the Spaeth Databases”

Handout: Using the Supreme Court Database
 Handout: Statistical analysis of the justices' records

B. Other sources on the justices

Reading:

Handout: Writing the prediction paper
 Handout: Researching justices

C. Identifying the justices' positions on issues

Reading:

Handout: Using past votes to predict votes in the current case

D. From research to paper

Class Schedule by Day

Dates on which we will take up each topic are listed below, along with the due dates for papers. As the schedule by day indicates, some class sessions will be set aside for students' lab work on the papers and consultation with me, and there probably will be some time on other days for lab work. As noted earlier, we may deviate a bit from the schedule where that would be useful in providing you with material and preparation that will be helpful to you.

September 19	Introduction to the course
September 24	An overview of the Supreme Court Reading and responding to scholarly articles
October 1	Justices' policy preferences and decisions CHOICES OF CASES AND JUSTICES DUE
October 3	Law and policy in decisions
October 8	Strategy and decisions
October 10	Developing a theory of the Supreme Court

October 15	The decision-making process THEORY PAPERS DUE (beginning of class)
October 17	Data sources on cases
October 22	Understanding legal briefs and court decisions
October 24	Tracking the development of the law
October 29	Lab and consultation session
October 31	Lab and consultation session
November 5	The Supreme Court Database PAPERS ON CASES DUE (beginning of class)
November 7	Identifying the justices' positions on issues
November 14	Other data sources on the justices
November 19	From research to paper
November 21	Lab and consultation session
November 26	Lab and consultation session
November 28	Lab and consultation session
November 30	PREDICTION PAPER DUE (12 p.m.)