

Political Science 4132H  
Fall 2013  
Mr. Baum

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## **SUPREME COURT DECISION MAKING**

This course is about explanation of the decisions made by the U.S. Supreme Court. The focus of the course is a research project. Each of you will choose a case that the Court has accepted for oral argument and decision in the 2013 Term and then write a paper predicting the positions that three justices will take in the case. The paper will involve integration of what you learn about explanation of Supreme Court decisions with what you learn about the case and the justices.

In a specific sense, the central goal of our readings, class sessions, and preliminary papers is to help you develop the best possible prediction paper. But that goal is a means to two broader ends. One end is to enhance your understanding of the Supreme Court, the process of judicial decision making, and the factors that shape judicial decisions and policies. The other end is to strengthen your skills in research, analysis, and writing.

In the class, 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. The theory is important because it provides the framework for your research and ultimately for your predictions. In other words, you will make predictions on the basis of what you think is relevant to the justices' choices.

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. You will then write a short paper presenting and justifying your own theory of the Court. Your theory, in its original form or modified, will be summarized at the beginning of the prediction paper.

2. The case. The second section of the prediction paper will analyze the issues in the case you have chosen, in the case itself and in relation to prior decisions. How the prediction paper analyzes issues depends in part on its theory of the Court, but any set of predictions must rest on an understanding of what a case is about and what the Court has said in past decisions that involved similar issues. Readings and material presented in class sessions will provide you 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 you have had a chance to do most of the research on their case, you will present an analysis of the issues in the case in a medium-length paper. The analysis, revised as appropriate, will be incorporated into the prediction paper.

3. The justices. The third section of the prediction paper will analyze evidence on the three justices that is relevant to predicting their positions in the case. This part of the paper requires an understanding of the three justices and analysis of evidence about the justices' positions on the issues that the Court will address in this specific case. For most of the justices, the most important source of evidence will be their votes and opinions in decisions in past terms of the Court. A resource called the Supreme Court Database can be used to identify relevant decisions and the justices' votes in those decisions, and we will work through the Database to help you utilize it. There will not be a separate paper on the justices, because you will do your research on the justices relatively close to the point at which the prediction paper needs to be written.

By **September 18th**, give me preferences for the case and the justices that will be the subjects of your research, and on the basis of those preferences I'll send you the assignments of cases and justices by the next day. I'll try to give everyone their first preferences. But in order to avoid too much duplication I don't want to have more than two students analyze the same case, and two students who have the same case generally should be analyzing different justices. Guidelines and suggestions for your preferences are on the "Choosing Cases and Justices" handout on Carmen; below it, under the title "Preferences of Cases and Justices," is a sheet on which to list your preferences.

Writing a high-quality prediction paper requires you 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 students 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 are required to succeed in the class, even if you start out knowing nothing about the subject. 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 the three papers, in the proportions 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	70%

The grading scales will be as follows:

	<u>1st two papers*</u>	<u>Prediction paper</u>	<u>Total</u>
A	12-15	56-70	80-100
B	9-11	42-55	60- 79
C	6- 8	28-41	40- 59

\*This is the scale for each of the two papers.

We will have some class sessions in which your participation is important, primarily during the section on theory and on days that we work through legal materials. Students can receive as many as 3 points as a bonus for high-quality contributions to these sessions, contributions that reflect good preparation and good thinking. I'll keep track of these contributions and assign any bonus points at the end of the semester.

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 probably look low to you, but they reflect the high standards that I use in evaluation of the papers. A student who receives 83 points in the course has done excellent work.

I've said something about the papers already. Let me tell you a bit more about them here (and repeat some of what I've said already). I'll give you more information during the quarter, in handouts and in class.

1. The **theory paper** presents and justifies a theory of the Supreme Court. It will be based on the arguments and evidence in the readings about Supreme Court decision making and our discussions in class. Your theory of decision making might be built on one of the theories that scholars have advocated, a mix of scholars' theories, or something quite different. The strength of the paper will depend primarily on the quality of the logic and evidence that the paper uses to justify its theory. The paper will provide a basis for the short summary of your theory in the prediction paper, though you are free to modify your theory after writing this paper. The paper will be about 5 double-spaced pages long. It is due at the beginning of class on **September 25th**.

2. The **case paper** describes and analyzes the issues in the case you have chosen, taking into account prior decisions of the Supreme Court and (if relevant) decisions of lower courts. The tasks are to clarify the legal and policy issues in the case, to lay out the arguments on those issues, and to describe the evidence for the litigants' competing arguments. When completed, the paper should serve as a means to help you identify the most important issues in the case and the strength of the competing arguments on those issues in the prediction paper. It should also point to the additional research on the case that needs to be done for the prediction paper. The paper will be about 10 double-spaced pages long. It is due at the beginning of class on **October 23rd**.

3. The **prediction paper** is the heart of your work in the class. In the prediction 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 the justice thinks should win the case) 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. The paper will have four sections: a short description of its theory, analysis of the case, analysis of the justices, and a brief presentation of predictions.

The prediction paper should be around 20-25 pages in length. It will be due at **noon on November 26th**, and it must be handed in by that time. More details on the content of the paper will be provided during the quarter, and of course a great deal of material will be presented in class to prepare you for writing the paper.

### **Required Syllabus Statements**

#### Academic Misconduct

“It is the responsibility of the Committee on Academic Misconduct to investigate or establish procedures for the investigation of all reported cases of student academic misconduct. The term “academic misconduct” includes all forms of student academic misconduct wherever committed; illustrated by, but not limited to, cases of plagiarism and dishonest practices in connection with examinations. Instructors shall report all instances of alleged academic misconduct to the committee (Faculty Rule 3335-5-487). For additional information, see the [Code of Student Conduct](#)”

#### Disabilities

“Students with disabilities that have been certified by the [Office for Disability Services](#) will be appropriately accommodated and should inform the instructor as soon as possible of their needs. The Office for Disability Services is located in 150 Pomerene Hall, 1760 Neil Avenue; telephone 292-3307, TDD 292-0901.”

## 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 to see me. I won't have regular office hours, but I'll be available most of the time; just let me know, and we can set up a time that's convenient for you. Also feel free to drop me notes by email. You can talk with me after class on most days, and we'll have several sessions during which there will be an opportunity to consult with me and get help in your research.

## Class Schedule by Topic (with readings and other materials)

Our schedule will be structured by 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.

The readings include a book, Linda Greenhouse, *The U.S. Supreme Court: A Very Short Introduction* (Oxford University Press 2012). You should buy that book. All other readings listed in the syllabus are available on the Carmen page for the class. Readings and other resources will be posted on the Carmen page before the time you will be using them. Many of the materials listed 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 sections with websites for your research and with electronic reserves.

I might 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 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 (August 21)

Handouts:

Choosing cases and justices

### B. Understanding the Supreme Court (August 23, 28, September 4)

Readings:

Greenhouse book (all)

Handout: Writing the theory paper

Handout: Understanding statistical analyses

## II. Explaining the Justices' Choices

### A. A first look at explanations (September 6)

*Shelby County v. Holder* (2013): read syllabus, skim opinions

### B. Legal and policy considerations (September 11, 13)

Readings:

Richard A. Posner, "Foreword: A Political Court," *Harvard Law Review* 119 (2005), 32-102 (read pp. 32-81)

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

Howard Gillman, "What's Law Got to Do with It? Judicial Behavioralists Test the 'Legal Model' of Judicial Decision Making," *Law & Social Inquiry* 26 (Spring 2001), 465-504.

Stefanie A. Lindquist and David E. Klein, "The Influence of Jurisprudential Considerations on Supreme Court Decisionmaking: A Study of Conflict Cases," *Law & Society Review* 40 (2006), 135-161.

### C. Influences on the justices: colleagues on the Court (September 18)

Pamela C. Corley, "Bargaining and Accommodation on the United States Supreme Court: Insight from Justice Blackmun," *Judicature* 90 (January-February 2007), 157-165.

Paul J. Wahlbeck, "Strategy and Constraints on Supreme Court Opinion Assignment," *University of Pennsylvania Law Review* 154 (June 2006), 1729-1755.

D. Influences on the justices: the world outside the Court (September 20)

Readings:

David Glick, "Conditional Strategic Retreat: The Court's Concession in the 1935 Gold Clause Cases," *Journal of Politics* 71 (July 2009), 800-816.

Micheal W. Giles, Bethany Blackstone, and Richard L. Vining, Jr., "The Supreme Court in American Democracy: Unraveling the Linkages between Public Opinion and Judicial Decision Making," *Journal of Politics* 70 (April 2008), 293-306.

Frederick Schauer, "Incentives, Reputation, and the Inglorious Determinants of Judicial Behavior," *University of Cincinnati Law Review* 68 (2000), 615-636.

### III. The cases

A. Legal principles and legal reasoning (September 25, 27, October 2)

Readings:

*Smith v. United States*, 508 U.S. 223 (1993): majority and dissenting opinions

Handout: Writing the case paper

Handout: Information sources for legal materials

B. Analyzing legal materials (October 4, 9)

Readings:

*CompuCredit Corp. v. Greenwood*, 10-948 (2012): Ninth Circuit opinions, petition for certiorari, petitioner's and respondent's briefs, amicus brief for Consumer Data Industry Association, and Supreme Court opinions

Handout: Citing legal sources

C. Tracking the development of the law (October 11)

*Batson v. Kentucky*, 476 U.S. 79 (1986): majority opinion

#### IV. The justices

##### A. Identifying the justices' positions on issues (October 23, 25, 30)

Readings:

Jeffrey A. Segal, "Supreme Court Justices as Human Decision Makers: An Individual-Level Analysis of the Search and Seizure Cases," *Journal of Politics* 48 (November 1986), 938-955.

Handouts on using past votes to predict votes in the current case  
Materials on the Supreme Court Database

##### B. Utilizing other information on the justices (November 1, 6)

Readings:

Handout: Researching justices

##### C. Working from research to paper (November 15)

Handout: Writing the prediction 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 your lab work on the papers and consultation with me, and there will be time on some 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.

August 21	Introduction to the course
August 23	Understanding the Supreme Court, part 1
August 28	Understanding the Court, part 2
September 4	Understanding the Court, part 3
September 6	A first look at explanations
September 11	Law and policy, part 1



September 13	Law and policy, part 2
September 18	Influence of colleagues CHOICES OF CASES AND JUSTICES DUE
September 20	Influence of the outside world
September 25	Legal principles and legal reasoning, part 1  THEORY PAPERS DUE (beginning of class)
September 27	Legal principles and legal reasoning, part 2
October 2	Legal principles and legal reasoning, part 3
October 4	Analyzing legal materials, part 1
October 9	Analyzing legal materials, part 2
October 11	Tracking the development of the law
October 16	Lab and consultation session
October 18	Lab and consultation session
October 23	Identifying justices' positions, part 1  CASE PAPERS DUE (beginning of class)
October 25	Identifying justices positions, part 2
October 30	Identifying justices' positions, part 3
November 1	Utilizing other information on the justices, part 1
November 6	Utilizing other information, part 2
November 8	Lab and consultation session
November 13	Lab and consultation session
November 15	Working from research to paper
November 20	Lab and consultation session

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November 22      Lab and consultation session

November 26      PREDICTION PAPERS DUE (12 p.m.)