

The Supreme Court
PSCI 3210.001 Spring 2011
MWF 11:00-11:50 am, Wooten Hall 218

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Office: Wooten Hall 154

Office Hours: Wednesdays 1:30 pm-4:30 pm and by appointment

Course Overview

The United States Supreme Court plays an important role in American democracy. As the highest court in the federal judiciary, its decisions do more than resolve disputes between litigants; they announce important public policies that govern relationships between and among citizens and governments. The Supreme Court plays an important role in determining the scope of freedoms enjoyed in the United States and its decisions frequently alter the balance of power between political actors and institutions, including citizens, the President, the Congress, the states, and the Court itself.

In this course, we will focus on the processes by which cases before the Supreme Court are decided and the factors that influence the decisions of Supreme Court justices. Additionally, we will consider the relationships between the Supreme Court and other actors, including the elected branches of government, lobbyists and the public.

Blackboard

A Blackboard conference is maintained for this course at <https://ecampus.unt.edu>. Students are responsible for checking Blackboard regularly for assignments and notices. Student grades will be posted on Blackboard and some assignments will be submitted through Blackboard.

Office Hours

I hold office hours weekly for your benefit. You may stop by my office (Wooten Hall 154) without an appointment during these hours; come with questions, concerns, or a desire for further discussion. My dedicated office hours for this class are Wednesday afternoons from 1:30-4:30 pm. I will also hold "virtual office hours" during this period using the Chat Room feature on Blackboard. If you are unable to get to campus, but have a question for me, just log-on to Blackboard, go to the Chat Room and ask. Be advised that students that come to my office in Wooten Hall will receive priority, so if you are online, you may have to wait a little longer for my attention. If Wednesday afternoons are not a convenient time for you, please email me and we can arrange an alternate time that works for both of our schedules.

Communication and E-mail

You may contact me via email through the course Blackboard page or through standard email. My email address is blackstone@unt.edu. When you email me, please include the course number (PSCI 3210) in the subject line of your messages. Also, please sign your emails with your first and last name, and include an appropriate salutation. (Hint: you can't go wrong with "Hi Professor Blackstone.") Articulate the content of your message clearly—do not use text message or instant message speak. Finally, before you email me, you should review the syllabus and course announcements on the class website—it is very likely that you can find an answer to your question(s) by examining the course materials.

If I need to contact you, I will send you a message through Blackboard. You should check Blackboard regularly to ensure that you receive all messages regarding the course.

Course Materials

The following items are required and are available at the UNT bookstore.

1. Lawrence Baum. *2010. The Supreme Court*, Tenth edition. Washington, D.C.: CQ Press. (Hereinafter Baum.)

This text is available new at the UNT bookstore for \$43.00. You can rent the text for \$20.84. You may also purchase it from another retailer if you prefer. If you buy the book elsewhere or obtain a used copy, ensure that you purchase the 10th edition.

2. Turning Point, Response Card RF-LCD.

Each student must purchase a Turning Point Response Card—frequently referred to as a “clicker.” New clickers may be purchased at the UNT bookstore for \$42.75. Used clickers are available for \$32.25.

Other assigned readings will be available on the course Blackboard site.

Clickers

As part of this class I require each student to purchase a TurningPoint clicker. Clickers are integrated with PowerPoint and Blackboard and allow instructors to conduct in-class polls, take attendance, get feedback about what is being discussed, and evaluate students' understanding of course materials (i.e. test).

Graded clicking begins Monday, January 24. You should bring your clicker with you to every class meeting. It is your responsibility to keep your clicker with you and to ensure that it has a functioning battery. Missed clicker questions cannot be made up. All students need to register their clickers through Blackboard prior to our class meeting on January 24. If your clicker is not registered by January 24, you will not receive clicker points for the duration of the semester.

Grading

Grades in this class will be assigned on a fixed scale. There are 1000 points possible.

900-1000	A
800-899	B
700-799	C
600-699	D
<600	F

Your grade will be based on the following factors:

- Reading Quizzes 150 points
- 2 Exams 300 points (150 points each)
- Participation 50 points
- Research Project/Prediction Paper 500 points

Reading Quizzes—150 points

You can earn up to 150 points for quizzes and assignments related to the readings. Unannounced quizzes will be given at the beginning of class. These quizzes will last about five minutes and will be closed book/notes. You will answer quiz questions using your clicker. Each quiz will consist of 1-3 questions related to the main points of the readings assigned for that day's class. If you have done the readings, you will find the quizzes easy. If you are late for class or are absent, you cannot make

up the quiz—you receive a zero. I understand that not everyone will attend every class, so your lowest two quiz scores will be dropped.

Exams—300 points (Midterm—150 points, Final—150 points)

There will be two exams in the course. The exams will consist of multiple choice, short answer, and essay questions. The midterm exam will include all material addressed in class and readings assigned through March 4. The final exam will be held on Monday, May 9. The final will focus predominantly on topics covered after the midterm; however, that material will draw heavily on your understanding of earlier material. In that sense, the final exam is cumulative. It is important that you build a solid foundation during the first half of the semester.

Participation—50 points

Your attendance and participation are expected. Because I will cover material in class that is not discussed in the readings, I strongly encourage you to attend each class session. If you are absent from a class session, it is your responsibility to obtain lecture notes from a classmate.

You will earn participation points for answering ungraded clicker questions throughout lectures and for actively participating in class discussions. Your participation grade is based not only on the quantity of your remarks in class, but also on their quality. Come to class prepared to contribute thoughtfully to the discussion and to answer questions posed by your fellow classmates.

Research Project—500 points¹

A research project is an important component of this course and your performance on this project will determine half of your course grade. Each student will choose a case that the Supreme Court has scheduled for oral argument and decision in the 2010 term and write a paper predicting the positions that three justices will take in the case. The paper will require integration of what you learn about Supreme Court decision-making with what you learn about the case and the justices through independent research.

To help you develop the best possible prediction paper, the assignment is broken down into three components. You will submit two preliminary papers, parts of which will ultimately be integrated into your final paper. The key components of your research and the prediction paper are reviewed below:

1. A Theory of the Supreme Court

Each prediction paper will begin by laying out a theory of the Court: your theory should explain what factors determine the positions that justices take in cases and 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 and book chapters 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. Your theory, in its original form or modified, will come at the beginning of your prediction paper.

¹ Lawrence Baum, Professor of Political Science at The Ohio State University is the original architect of this research assignment. I am grateful to him for allowing me to adopt and adapt the assignment for inclusion in this course.

2. The Case

The second section of the prediction paper will analyze the issues in the case you have chosen, both in the case itself and in relation to prior decisions. How you analyze issues in your prediction paper will depend in part on your 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 students have had a chance to do most of the research on their case, a short paper will present an analysis of the issues in the case. 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, that evidence will come primarily from 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. We will work through the Database to help students in utilizing it. There will not be a separate paper on the justices, because research on the justices will likely be done relatively close to the point at which the prediction paper needs to be written.

By Wednesday, February 2, each student will give me a sheet indicating their preferences for the case and the justices that will be the subjects of the paper. On the basis of those preferences, I'll send you the assignments of cases and justices by Monday, February 7. I will do my best to assign students cases and justices that reflect their preferences. This may not always be possible, however, as I would prefer not to have more than two students analyzing the same case. Further, when two students analyze the same case, they should be analyzing different justices.

The form on which you should list your preferences for cases and justices is posted in Blackboard. Please submit it to me (in hard copy) in class by February 2.

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 students will have a head start. Much of what you need to know will be new to nearly everyone. Importantly, the course is designed to provide you with all the information and skills you need to succeed, even if you start out knowing nothing about the subject. Don't panic!

The research project grade will be based on the three papers. 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. Without my approval, late papers will be penalized 10% of their value if submitted after the 11:00 am deadline on the due date and an additional 10% for every additional day the assignment is late.

Project Components: Point Values and Deadlines

Theory Paper	100 points	Due by 11:00 am on Wednesday, March 2
Case Paper	100 points	Due by 11:00 am on Monday, April 4

Prediction Paper

300 points

Due by 11:00 am on Wednesday, May 4

Papers must be submitted in hard copy and electronically through Blackboard. You agree by taking this course that all required assignments are subject to submission for textual similarity review to www.turnitin.com or a similar plagiarism identification system.

Make Up Policies

You are expected to complete assignments by the due date and to take examinations at the scheduled times. Make-up opportunities for missed exams will generally only be allowed when an absence is due to observance of a religious holiday or participation in a university-sponsored activity. Arrangements for make-up work should be made prior to a scheduled absence whenever possible.

Failure to appear for a scheduled exam without prior notification and prior arrangements for a make-up exam will result in a score of zero (0) for that exam if your absence was foreseeable or preventable. If an emergency prevents you from taking an exam at the scheduled time, you should contact me as soon as is humanly possible to request a make-up exam. I will determine on a case-by-case basis whether or not an excuse justifies a make-up exam. If a make-up exam is allowed, the format and questions may differ from the exam offered at the appointed class time and I will require documentation to verify your excuse for missing the scheduled exam.

Grade Disputes

A significant amount of time is invested in grading student assignments. If you wish to dispute a grade, you must do so in writing within one week of the date that grades are made available to the class. When requesting reconsideration of a grade, you should provide a clear explanation as to why a different grade is in order. You should also indicate what grade you believe is appropriate for your work. Please be advised that I will not change a grade simply because someone "wants" or "needs" a higher grade. Also, when work is reviewed for a grade dispute, the grade may be left unchanged, raised or lowered. All grade disputes are due in hard copy within one week of the date that grades are returned in class. Grade disputes will not be considered if submitted past the one-week statute of limitations.

The Family Educational Rights and Privacy Act (FERPA) prohibits me from discussing grades via email. Accordingly any discussion about course grades should be handled in person during office hours.

Statement on Acceptable Student Behavior

Student behavior that interferes with an instructor's ability to conduct a class or other students' opportunity to learn is unacceptable and disruptive and will not be tolerated in any instructional forum at UNT. Students engaging in unacceptable behavior will be directed to leave the classroom and the instructor may refer the student to the Center for Student Rights and Responsibilities to consider whether the student's conduct violated the Code of Student Conduct. The university's expectations for student conduct apply to all instructional forums, including university and electronic classroom, labs, discussion groups, field trips, etc.

Statement on Academic Integrity

The Political Science Department adheres to and enforces UNT's policy on academic integrity (cheating, plagiarism, forgery, fabrication, facilitating academic dishonesty and sabotage). Students in this class should review the policy (UNT Policy Manual Section 18.1.16). Violations of academic

integrity in this course will be addressed in compliance with the penalties and procedures laid out in this policy.

Accommodations

The University of North Texas is on record as being committed to both the spirit and letter of federal equal opportunity legislation; reference Public Law 92-112—The Rehabilitation Act of 1973 as amended. With the passage of new federal legislation entitled Americans with Disabilities Act (ADA), pursuant to section 504 of the Rehabilitation Act, there is renewed focus on providing this population with the same opportunities enjoyed by all citizens.

The Political Science Department cooperates with the Office of Disability Accommodation (ODA). The ODA makes formal recommendations regarding necessary and appropriate accommodations based on specifically diagnosed disabilities. If you are a student with a disability and wish to request accommodations, you should contact the ODA as soon as possible at 940.565.4323. Please present your written accommodation request to me on or before January 31. Information regarding disabilities is treated in a confidential matter.

Course Outline

The following represents an approximate calendar of class discussions. I will do my best to adhere to this schedule. Exam dates should be considered firm, and you should arrange your personal schedule to be present at the appointed times. You should complete the listed readings by the beginning of class on the date that they are listed. (Some dates do not have reading assignments listed; on these days we will continue the material from the previous class session or I will introduce new material that you are not required to read.)

Section I: Understanding the Court

In order to understand the role of the Court in American society and the influences on the decisions that justices make, you must understand the work of the Court. In this section we will review the nuts and bolts of the operation of the Supreme Court. We will focus on the processes by which cases come to the Court and are handled by the Court, the characteristics of the individuals chosen to serve as justices, and the characteristics of the cases heard by the Court.

Course Intro

W January 19 Syllabus

The Court

F January 21 • Baum, Chapter 1, "The Court," pages 1-26

The Justices

M January 24 • Baum, Chapter 2, "The Justices," pages 27-68
• **Register Your Clicker in Blackboard by 11:00 am**
W January 26 (no new reading)

The Cases

F January 28 • Baum, Chapter 3, "The Cases," pages 69-105
M January 31 • Baum, Chapter 5, "Policy Outputs," pages 155-178

Section II: Judicial Decision-Making and the Study of Law and Courts

We will next consider the factors that influence the decisions that justices make. We will review the primary theories of judicial behavior in the field of political science—the legal model, the attitudinal model and the strategic model. These theories will provide the building blocks for the theory you build in your prediction paper. Throughout the course, we will read scholarly research that evaluates the applicability of these theories to the behavior of Supreme Court justices. To enable you to evaluate this research, this section of this course includes one class session that introduces you to the statistical approaches political scientists use to evaluate judicial behavior. Do not be alarmed, you will not be expected to conduct your own statistical analyses in this class. You will learn how to read and evaluate scholarship that employs statistical methods. We conclude this session with a week of instruction on the conduct of legal research.

Introduction to Judicial Decision Making

W February 2 • Baum, Chapter 4, "Decision Making," pages 106-154
• **Submit Case and Justice Preferences for Prediction Paper in class**

Statistical Approaches to the Study of Political Phenomena

We will be reading materials that rely on statistical methods throughout the remainder of the course. It is imperative that you attend this class.

F February 4 • Collins, "Primer on Statistical Approaches to Political Science," on Blackboard

The Influence of Law

- M February 7 • Jeffrey A. Segal and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press (Hereinafter *SCAMR*), Chapter 2, pages 44-85
- W February 9 • *SCAMR*, Chapter 7, pages 279-311

The Influence of Policy

- F February 11 • Christopher L. Eisgruber. 2009. *The Next Justice: Repairing the Supreme Court Appointments Process*. Princeton: Princeton University Press, Chapters 2 and 3, pages 17-50.
- M February 14 • *SCAMR*, Chapter 3, pages 86-97.
- W February 16 • *SCAMR*, Chapter 8, pages 312-326.

The Justices as Strategic Actors

- F February 18 • Lee Epstein and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: CQ Press, Chapters 1 and 2, pages 1-55.

Conducting Legal Research

This week is devoted to instruction on resources that you will use for your prediction papers. These sessions will provide you with the tools you need to successfully complete your prediction papers. Do not miss them!

- M February 21 • Diana Botluck. 2000. "Strategies for Online Legal Research: Determining the Best Way to Get What You Need."
<http://www.llrx.com/features/strategy.htm>. (Accessed November 30, 2010.)
- Gail Partin. 2003. "Web Guide to U.S. Supreme Court Research."
<http://www.llrx.com/features/supremectwebguide.htm> (Accessed November 30, 2010).
- W February 23 (no new reading)
- F February 25 (no new reading)

III. Transmission of Legal Arguments and Decisions

Legal briefs and opinions are the primary forms of currency for legal arguments. Litigants and interested parties submit their arguments to the court in written briefs (as well as through oral presentation at oral argument) and the Court announces its decisions through the provision of lengthy opinions that say, not only which litigant is the winner in a particular case, but also what legal principles and rules were used by the Court to reach its decision. Opinions tell future Supreme Court justices and judges of lower courts how they ought to decide similar cases. This section should give you the background necessary to read and understand the opinions and briefs you will identify as relevant for your prediction paper.

Legal Reasoning and Brief Writing

- M February 28 • Antonin Scalia and Bryan A. Garner. 2008. *Making Your Case: The Art of Persuading Judges*. St. Paul, MN: Thomson West. "Legal Reasoning," pages 39-56 and "Briefing," pages 57-60 and 82-101.
- W March 2 • *Batson v. Kentucky*, 476 U.S. 79 (1986), majority opinion
- **Theory Papers Due by 11:00 am**
- F March 4 • *Berghuis v. Smith*, docket no. 08-1402, petition for writ of certiorari, petitioner's and respondent's briefs

Monday, March 7: Midterm Examination

IV: Combining Theory and Empirics

In this section, we will combine your knowledge of theories of judicial behavior, Supreme Court processes and the tools of social scientific research to evaluate hypotheses about judicial behavior. We will revisit a number of the decisions that Supreme Court justices make (the decision to grant certiorari, opinion assignment, case outcomes, opinion language) and consider the relative influence of the various factors that may influence the justices' behavior.

Certiorari and Oral Argument

- W March 9 • William H. Rehnquist. 2001. *The Supreme Court*. New York: Vintage Books, Chapters 12-14, pages 224-266
- F March 11 • H.W. Perry. 1991. *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Cambridge, MA: Harvard University Press, Chapter 3, "The Internal Process," pages 41-91.
- M March 21 (no new reading)
- W March 23 • Timothy R. Johnson, Paul J. Wahlbeck, and James F. Spriggs, II. 2006. "The Influence of Oral Arguments on the U.S. Supreme Court." *American Political Science Review*, 100(1): 99-113.

Outcomes and Opinions

- F March 25 • Forrest Maltzman and Paul J. Wahlbeck. 2004. "A Conditional Model of Opinion Assignment on the Supreme Court." *Political Research Quarterly*, 57: 551-563.
- M March 28 • Paul J. Wahlbeck, James F. Spriggs, II, and Forrest Maltzman. 1998. "Marshalling the Court: Bargaining and Accommodation on the Supreme Court." *American Journal of Political Science*. 42: 294-315.
- W March 30 • Jeffrey A. Segal. 1986. "Supreme Court Justices as Human Decision Makers: An Individual Level Analysis of the Search and Seizure Cases." *The Journal of Politics*, 48: 938-955.
- F April 1 **No Class Meeting.** *I encourage you to schedule an appointment with me this week to discuss your progress on the prediction paper.*

External Influences on Supreme Court Decision Making: The Separation of Powers

- M April 4 • Baum, Chapter 6, pages 202-215
- Lee Epstein and Thomas G. Walker. 1995. "The Role of the Court in American Society: Playing the Reconstruction Game." In *Contemplating Courts*, ed. Lee Epstein. Washington, D.C.: CQ Press. (pages 315-346)
- **Case Papers Due by 11:00 am**
- W April 6 • Robert A. Dahl. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law*. 6: 279-295.
- Jonathan Casper. 1976. "The Supreme Court and National Policy Making." *American Political Science Review*. 70(1): 50-63.
- F April 8 • Christopher Zorn. 2002. "U.S. Government Litigation Strategies in the Federal Appellate Courts." *Political Research Quarterly*. 55(1): 145-166.
- M April 11 • Michael A. Bailey, Brian Kamoie, and Forrest Maltzman. 2005. "Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision Making." *American Journal of Political Science* 49(1): 72-85.

External Influences on Supreme Court Decision Making: Interest Groups and the Public

- W April 13 • Lee Epstein and Jack Knight. 1999. "Mapping Out the Strategic Terrain: The Informational Role of *Amici Curiae*," in *Supreme Court Decision-Making*, eds. Cornell W. Clayton and Howard Gillman, Chicago: University of Chicago Press.

(pages 215-235)

- F April 15 • Paul M. Collins, Jr. 2007. "Lobbyists before the U.S. Supreme Court: Investigating the Influence of Amicus Curiae Briefs." *Political Research Quarterly*. 60(1): 55-70.
- M April 18 • Micheal W. Giles, Bethany Blackstone, and Richard L. Vining, Jr. 2008. "The Supreme Court in American Democracy: Unraveling the Linkages between Public Opinion and Judicial Decision Making." *Journal of Politics*. 70(2): 293-306.

V. Staffing the Bench: Departures and Selection

Among the most important decisions presidents make are their choices related to staffing the Supreme Court. We will consider the process by which justices are nominated and confirmed by the U.S. Senate and the ability of presidents to control the selection process. Because nominations cannot occur until a vacancy occurs on the Court, we will begin by considering the modes by which justices leave the bench. We will then review the nomination and confirmation processes before considering criticisms of the current system and proposals for reform.

- W April 20 • Christopher Zorn and Steven R. Van Winkle. 2000. "A Competing Risks Model of U.S. Supreme Court Vacancies, 1789-1992." *Political Behavior* 22(June): 145-166.
- F April 22 • William H. Rehnquist. 2001. *The Supreme Court*. New York: Vintage Books, Chapters 11, pages 209-223.
- M April 25 • Jeffrey Toobin. 2007. *The Nine: Inside the Secret World of the Supreme Court*. New York: Doubleday. Pages 257-283, 298-300, 311-316.
- W April 27 • Lee Epstein, Andrew D. Martin, Kevin M. Quinn, and Jeffrey A. Segal. 2009. "Circuit Effects: How the Norm of Federal Judicial Experience Biases the U.S. Supreme Court." *University of Pennsylvania Law Review* 157: 101-146.
- F April 29 • Christopher L. Eisgruber. 2009. *The Next Justice: Repairing the Supreme Court Appointments Process*. Princeton: Princeton University Press, Chapters 10 and 11, pages 178-192.

VI. Impact and Implementation of Supreme Court Decisions

The Supreme Court has been characterized as "the least dangerous branch" of the federal government because it lacks the authority to implement its decisions. In the final section of the course, we will consider the factors that affect whether or not Supreme Court decisions are faithfully implemented. We will also consider the broader impacts of select Supreme Court decisions to highlight the significant, but variable, role that the Court plays in shaping public policy.

- M May 2 • Baum Chapter 6, pages 187-201, 215-229.
- W May 4 • Baum Chapter 5, pages 179-186.
- **Prediction Papers due by 11:00 am**

Monday, May 9, 10:30 am-12:30 pm Final Exam