

University at Buffalo
PSC 662/LAW 662: Judicial Process
Spring 2017
M 1:00 p.m. - 3:50 p.m.
Park Hall 502

Instructor Information

Dr. Rachael K. Hinkle

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Office Hours: Wednesday, noon to 3:00 p.m. and by appointment

Required Books

Note: All three books are available electronically from the UB Library.

Lee Epstein, William M. Landes, and Richard A. Posner. *The Behavior of Federal Judges*. Harvard University Press, 2013.

Susan B. Haire and Laura P. Moyer. *Diversity Matters: Judicial Policy Making in the US Courts of Appeals*. University of Virginia Press, 2015.

Kevin T McGuire. *New Directions in Judicial Politics*. Routledge, 2012.

Other course readings are available online (via J-STOR, Google Scholar, etc.) or on UBLearn.

Course Description

This graduate seminar focuses on the study of judicial behavior. Students will be introduced to some of the theoretical and empirical research on judicial behavior. In particular, we will consider a variety of theoretical arguments (and the supporting empirical evidence) concerning the manner in which courts operate. We will study various topics including theories of judicial decision making, judicial selection, judicial impact and implementation and courts and the public. Much of the emphasis is on the U.S. Supreme Court, because much of the emphasis in the literature is on this single court. However, we also will focus on the study of other courts, such as the Federal Courts of Appeals and District Courts, State Courts, and the study of courts from a comparative perspective.

Requirements and Evaluation

- **Class attendance, participation, and discussion leading (20%)**

Both attendance and participation are essential. You are expected to make every effort to attend all class sessions (on time) and complete all the assigned readings **BEFORE** class.

Each class will have two or three assigned discussion leaders. Your job in this role will be to carefully read the assigned readings, prepare discussion questions, think critically about how the work fits together (or doesn't), discuss the questions(s) that are being tackled by the research, crystallize what is learned from the research, critique the authors' theory, research design, evidence, methodology and/or conclusions, and propose remaining questions or new avenues for research in the area. Discussion leaders **MUST** bring to class some form of document to turn in to me at the start of class. The format is entirely up to you. It could be a list of discussion questions or it could be something like a handout that you give to the whole class. Discussion leaders are encouraged to work together, but not required to do so. If you do work together in preparing for the class, you only need to provide me with one printed document. During the semester, each student will co-lead discussion three times.

- **Writing a Midterm Comprehensive Question (5%)**

On March 6, 2017 (at the beginning of class) you must submit a possible question for a comprehensive exam question (related to the material from the class to date). I will circulate these questions among all of the students.

- **Midterm Comprehensive Exam (25%)**

All students will be required to take a midterm comprehensive essay exam on March 13, 2017. This exam will be administered electronically during class time (but at the location of your choice). The exam will have one essay question, will be open note, open book (collaboration not permitted), and will be derived from the first half of the class material. **Late exams will lose 5% per hour that they are late.**

- **Final Class Assignment (Choose One): (50%)**

For the final class assignment, students may choose between a second (longer) comprehensive exam and a research paper. Ph.D. students are encouraged to write the paper. Students must make their selection (and notify me via e-mail) no later than February 20, 2017.

Paper option (graduate students only):

For this project, the ultimate goal is to write an original research paper that empirically analyzes a topic (loosely) connected to this course. To do this, you need to develop a testable research question, find or collect data relevant to that topic, and analyze those data. Various elements of the paper will be due throughout the semester as listed below (along with the portion of your class grade that is associated with each).

- Topic: Due **Week 5**, 2/27 in class (ungraded)
- Outline: Due **Week 8**, 3/27, in class (5%)
- Literature Review: Due **Week 11**, 4/17, in class (10%)
- First Draft: Due **Week 13**, 5/1, in class (15%)
- Final Draft: Due Wednesday, **5/17** by 5:00 p.m. (20%)

Late paper assignments will lose 10% per day (with the “day” clock beginning as soon as class begins).

Final Comprehensive Exam Option:

For this option, students will take another open book, open note (no collaboration) exam derived from the entire body of material for the course. This exam will require three essay questions to be answered over a period of about 36 hours. **Late exams will lose 5% per hour that they are late.**

Modifications for Undergraduate Seminar Participants

- Undergraduates will co-lead discussion two times this semester, not three.
- Each time an undergraduate is a discussion co-leader, they will be paired with at least one graduate student co-leader.
- Readings marked with an asterisk are optional for undergraduate students.
- On the final exam, undergraduate students will only be required to answer two essay questions.

Academic Integrity

All students are expected to be familiar with and abide by the University’s academic integrity policies, available in the Graduate School Policies and Procedures Manual. Plagiarism detection software may be used by individual instructors or the institution to aid in determining the originality of student work. The UB Libraries’ guide on proper citation methods provides useful information for students.

Accessibility Resources

If you require classroom or testing accommodations due to a disability, please contact Accessibility Resources, located at 25 Capen Hall. AR can be reached by phone at (716) 645-2608 or by email at stu-accessibility@buffalo.edu. Please inform me as soon as possible about your needs so that we can coordinate your accommodations.

Course Schedule

The following schedule is approximate; assignments may be adjusted during the course of the semester.

Notes: (1) All assigned reading must be conducted prior to the class for which it is listed. (2) Undergraduates are not required to complete readings preceded with an asterisk.

1/30 - Week 1: Course Introduction (no reading)

2/16 - Week 2: Judicial Selection and Retention: States

Lee Epstein and Andrew D. Martin. *An Introduction to Empirical Legal Research*, 2014, Chapter 2.

Melinda Gann Hall. State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform. *American Political Science Review*, 95(2):315–330, 2001.

Gregory A Huber and Sanford C Gordon. Accountability and Coercion: Is Justice Blind When it Runs for Office? *American Journal of Political Science*, 48(2):247–263, 2004.

Paul Brace and Brent D Boyea. State Public Opinion, the Death Penalty, and the Practice of Electing Judges. *American Journal of Political Science*, 52(2):360–372, 2008.

McGuire (2012), Chapter 3

*James L Gibson. Challenges to the Impartiality of State Supreme Courts: Legitimacy Theory and New-Style Judicial Campaigns. *American Political Science Review*, 102(01):59–75, 2008.

2/13 - Week 3: Judicial Selection and Retention: Federal

Elisha Carol Savchak, Thomas G Hansford, Donald R Songer, Kenneth L Manning, and Robert A Carp. Taking it to the Next Level: The Elevation of District Court Judges to the U.S. Courts of Appeals. *American Journal of Political Science*, 50(2):478–493, 2006.

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

Nancy Scherer, Brandon L Bartels, and Amy Steigerwalt. Sounding the Fire Alarm: The Role of Interest Groups in the Lower Federal Court Confirmation Process. *The Journal of Politics*, 70(04):1026–1039, 2008.

Maya Sen. How Judicial Qualification Ratings May Disadvantage Minority and Female Candidates. *Journal of Law and Courts*, 2(1):33–65, 2014.

Epstein, et. al. (2013), Chapter 8

*Sarah A. Binder and Forrest Maltzman. Senatorial Delay in Confirming Federal Judges, 1947-1998. *American Journal of Political Science*, 46(1):190–199, 2002.

2/20 - Week 4: Models of Judicial Decision Making
[Deadline to select type of final assignment.]

Charles Gardner Geyh (ed.) *What's Law Got to Do With It: What Judges Do, Why They Do It, and What's at Stake*. Stanford University Press, 2011, Ch. 1, pp. 17-40.

Tracey E. George and Lee Epstein. On the Nature of Supreme Court Decision Making. *American Political Science Review*, 86(2):323–337, 1992.

Jeffrey A. Segal and Harold J. Spaeth. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press, 2002, pp. 86-97.

Michael A. Bailey and Forrest Maltzman. Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court. *American Political Science Review*, 102(3):369–84, 2008.

Epstein, et. al. (2013), Chapter 1

*Rachael K. Hinkle. Legal constraint in the u.s. courts of appeals. *Journal of Politics*, 77:721–735, 2015.

2/27 - Week 5: Measures of Judicial Decision Making
[Research Paper Topic due at beginning of class (if applicable).]

Jeffrey A. Segal and Albert D. Cover. Ideological Values and the Votes of U.S. Supreme Court Justices. *American Political Science Review*, 83(2):557–565, 1989.

A.D. Martin, K.M. Quinn, and L. Epstein. The Median Justice on the United States Supreme Court. *NCL Rev.*, 83:1275, 2005.

Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, and Chad Westerland. The judicial common space. *Journal of Law, Economics, & Organization*, 23(2):303–325, 2007. Data available at <http://epstein.usc.edu/research/JCS.html>.

Adam Bonica and Michael J Woodruff. A Common-Space Measure of State Supreme Court Ideology. *Journal of Law, Economics, and Organization*, 31(3):472–498, 2015.

Epstein, et. al. (2013), pp. 65-77

*Tom S Clark and Benjamin Lauderdale. Locating Supreme Court Opinions in Doctrine Space. *American Journal of Political Science*, 54(4):871–890, 2010.

3/6 - Week 6: Hierarchical Constraints on Judging

[Midterm Comprehensive Question due at beginning of class.]

Kirk A. Randazzo. Strategic Anticipation and the Hierarchy of Justice in U.S. District Courts. *American Politics Research*, 36(5):669–693, 2008.

Christina L Boyd. The Hierarchical Influence of Courts of Appeals on District Courts. *The Journal of Legal Studies*, 44(1):113–141, 2015.

Epstein, et. al. (2013), Chapter 5

Donald R. Songer, Jeffrey A. Segal, and Charles M. Cameron. The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court–Circuit Court Interactions. *American Journal of Political Science*, 38(3):673–696, 1994.

Chad Westerland, Jeffrey A. Segal, Lee Epstein, Charles M. Cameron, and Scott Comarato. Strategic Defiance and Compliance in the U.S. Courts of Appeals. *American Journal of Political Science*, 54(4):891–905, 2010.

*Max M Schanzenbach and Emerson H Tiller. Strategic Judging under the U.S. Sentencing Guidelines: Positive Political Theory and Evidence. *Journal of Law, Economics, & Organization*, 23(1):24–56, 2007.

3/13 - Week 7: Midterm Comprehensive Exam

3/20 - Spring Break: No Class

3/27 - Week 8: External Constraints on Federal Judging

[Outline due at beginning of class (if applicable).]

Robert A. Dahl. Decision-Making in a Democracy: The Supreme Court as a National Policy Maker. *Journal of Public Law*, 6:279–295, 1957.

Robert H Durr, Andrew D Martin, and Christina Wolbrecht. Ideological Divergence and Public Support for the Supreme Court. *American Journal of Political Science*, pages 768–776, 2000.

Tom S. Clark. The Separation of Powers, Court Curbing, and Judicial Legitimacy. *American Journal of Political Science*, 53(4):971–989, 2009.

Matthew EK Hall. The Semiconstrained Court: Public Opinion, the Separation of Powers, and the US Supreme Court’s Fear of Nonimplementation. *American Journal of Political Science*, 58(2):352–366, 2014.

McGuire (2012), Chapter 3

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

4/3 - Week 9: External Constraints on State Judging

Melinda Gann Hall. Constituent Influence in State Supreme Courts: Conceptual Notes and a Case Study. *The Journal of Politics*, 49(04):1117–1124, 1987.

James H Kuklinski and John E Stanga. Political Participation and Government Responsiveness: The Behavior of California Superior Courts. *The American Political Science Review*, pages 1090–1099, 1979.

Michael J Nelson. Responsive Justice? *Journal of Law and Courts*, 2(1):117–152, 2014.

Hazelton, Morgan LW and Montgomery, Jacob M and Nyhan, Brendan. Does public financing affect judicial behavior? evidence from the north carolina supreme court. *American Politics Research*, 44(4):587–617, 2016.

*Richard P Caldarone, Brandice Canes-Wrone, and Tom S Clark. Partisan Labels and Democratic Accountability: An Analysis of State Supreme Court Abortion Decisions. *The Journal of Politics*, 71(02):560–573, 2009.

4/10 - Week 10: Internal Constraints on Judging

Lee Epstein, Jeffrey A. Segal, and Harold J. Spaeth. The Norm of Consensus on the U.S. Supreme Court. *American Journal of Political Science*, 45(2):362–377, 2001.

Frank B. Cross and Emerson H. Tiller. Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals. *Yale Law Journal*, 107:2155, 1998.

Jonathan P. Kastellec. Hierarchical and Collegial Politics on the U.S. Courts of Appeals. *Journal of Politics*, 73(02):345–361, 2011.

Epstein, et. al. (2013), pp. 144-149, 154-158, 183-199, Ch. 6

*Chris W. Bonneau, Thomas H. Hammond, Forrest Maltzman, and Paul J. Wahlbeck. Agenda Control, the Median Justice, and the Majority Opinion on the U.S. Supreme Court. *American Journal of Political Science*, 51(4):890–905, 2007.

4/17 - Week 11: Accessing Courts

[Literature Review due at beginning of class (if applicable).]

Jr. Boucher, Robert L. and Jeffrey A. Segal. Supreme Court Justices as Strategic Decision Makers: Aggressive Grants and Defensive Denials on the Vinson Court. *Journal of Politics*, 57(3):pp. 824–837, 1995.

Micheal W. Giles, Virginia A. Hettinger, Christopher Zorn, and Todd C. Peppers. The Etiology of the Occurrence of En Banc Review in the U.S. Court of Appeals. *American Journal of Political Science*, 51(3):449–463, 2007.

Michael A Bailey, Brian Kamoie, and Forrest Maltzman. 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, 2005.

Ryan C. Black and Ryan J. Owens. Agenda Setting in the Supreme Court: The Collision of Policy and Jurisprudence. *Journal of Politics*, 71(3):1062–1075, 2009.

*Gregory A. Caldeira and John R. Wright. Organized Interests and Agenda Setting in the U.S. Supreme Court. *American Political Science Review*, 82(4):1109–1127, 1988.

4/24 - Week 12: The Effects of Diversity on Judging

Christina L. Boyd, Lee Epstein, and Andrew D. Martin. Untangling the Causal Effects of Sex on Judging. *American Journal of Political Science*, 54(2):389–411, 2010.

Jonathan P Kastellec. Racial diversity and judicial influence on appellate courts. *American Journal of Political Science*, 57(1):167–183, 2013.

Haire, et. al. (2015), pp. 55-79, and 99-137.

*John Szmer, Robert K Christensen, and Erin B Kaheny. Gender, Race, and Dissensus on State Supreme Courts. *Social Science Quarterly*, 96(2):553–575, 2015.

5/1 - Week 13: Comparative and International Courts

[First Draft of Research Paper due at beginning of class (if applicable).]

Gretchen Helmke. The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy. *American Political Science Review*, 96(2):291–303, 2002.

Clifford J Carrubba, Matthew Gabel, and Charles Hankla. Judicial Behavior Under Political Constraints: Evidence from the European Court of Justice. *American Political Science Review*, 102(04):435–452, 2008.

Erik S. Herron and Kirk A. Randazzo. The Relationship between Independence and Judicial Review in Post-Communist Courts. *Journal of Politics*, 65(2):422–438, 2003.

Emilia Justyna Powell and Sara McLaughlin Mitchell. The International Court of Justice and the World's Three Legal Systems. *Journal of Politics*, 69(2):397–415, 2007.

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

5/8 - Week 14: Judicial Politics Research using Text Analysis

Pamela C. Corley, Paul M. Collins, and Bryan Calvin. Lower Court Influence on U.S. Supreme Court Opinion Content. *Journal of Politics*, 73:31–44, 2011.

Douglas R Rice. Issue Divisions and US Supreme Court Decision Making. *The Journal of Politics*, 79(1):210–222, 2017.

Morgan L.W. Hazelton, Rachael K. Hinkle, and James F. Spriggs II. The Long and the Short of It: The Influence of Briefs on Outcomes in the Roberts Court. 2017, *Washington University Journal of Law & Policy*, forthcoming.

Michael J. Nelson. Elections and Explanations: Judicial Elections and the Readability of Judicial Opinions.

Epstein, et. al. (2013), Chapter 7

*Rachael K. Hinkle, Andrew D. Martin, Jonathan D. Shaub, and Emerson H. Tiller. A Positive Theory And Empirical Analysis Of Strategic Word Choice In District Court Opinions. *Journal of Legal Analysis*, 4:407–444, 2012.