

Political Science 383.001  
The Judiciary

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26 Coming # 101

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**Course Description:** This course provides material that analyzes the major legal concepts and operations of the American judicial system with an emphasis on the political as well as the legal factors involved in judicial decision-making. Further emphasis will be placed on the behavior of actors who play key roles in the judicial process and how political scientists study the judiciary.

**Texts and materials:**

Carp, Stidham and Manning. Judicial Process in America. 7<sup>th</sup> Ed. CQ Press  
McGuire: Understanding the U.S. Supreme Court. Mc-Graw-Hill.  
Murphy, Pritchett, Epstein, and Knight, eds. Courts, Judges, and Politics. 6<sup>th</sup> edition.  
McGraw-Hill

Other required readings will be on Electronic Reserve and are so indicated in the "Course Outline, Reading, and Assignment Schedule" below.

Also useful may be some web sites located at: <http://www.cofc.edu/~mannd/newlaw.html>

**Requirements:**

1. Papers: two in-term papers (or take home exams, as you may wish them to be called) are required for this course. They are scheduled as noted below and as described on the appropriately titled page of this syllabus.
2. Exams: there will be no in-term exams in this course.
3. Final Exam: as scheduled by the College.
4. **On all work, identify yourselves by the last five digits of your C of C student number only.**
5. Attendance: class roll will be taken on random days.
6. Alternative meeting site: If for any reason we are locked out of our normal classroom or building, we will rendezvous at the Randolph Hall fountain and meet there or elsewhere. This includes all due dates.

7. Grading policy: There is no class curve. The papers and the final are worth 30% each toward the course grade. Attendance is worth 10%. All paper scores are marked numerically based on 100 points maximum, with the following letter grade equivalents:

A = 93+  
A-=90-92.9  
B+=87.5-89.9  
B =83-87.4  
B-=80-82.9  
C+=77.5-79.9  
C =73-77.4  
C-=70-72.9  
D+=67.5-69.9  
D =63-67.4  
D-=60-62.9

8. Do not call the David Mann whose name is in the phone book. It is not me. Contact me during regular office hours or business hours via e-mail, snail mail, voice mail, written messages left in my department mailbox at 114 Wentworth 2<sup>nd</sup> floor # 201, or by appointment. Messages left on my office door might not be seen. Papers or messages left under my door may be ignored.
9. All hand-held electronic devices, cell phones, pagers, and alarms shall be turned to silent or vibrate during all class periods. Those who violate this rule may be asked to leave and attendance for that date deducted.
10. The instructor reserves the right to generate a pop quiz or other assignment if it is deemed that the students are not coming to class prepared to discuss the relevant reading material.
11. Opening Commentary: there are two major schools of thought and three ways of studying those schools. There are no established names for the former, so I will give them names. The “rule of law” school asserts that those who make judicial decisions follow the law, obey precedent, and do not allow their own personal ideologies to interfere with their decision-making. The “attitudinal” school asserts that attitudes and values of decision-makers can predict decisions, often with excellent, though not perfect, statistical accuracy. Three ways of studying those two schools can be labeled as traditional (or structural-functional or thesis), behavioral (or antithesis), and post-behavioral (which takes into account both structural-functionalism and behavior or synthesis).

## Course Outline, Reading, and Assignment Schedule

Class discussion is an important component of this course. The success of each student in completing this course depends on the student's ability to keep up with the reading and to make careful preparation before class. If you cannot keep up, drop the course.

1. Read according to the sequence listed below. Take notes while you read. Be sure to read the footnotes to locate scholars' names and articles, some of which will become familiar to you.
2. As you are reading, you may find some of these to be valuable:
  - a. What is the hypothesis or objective of the chapter or article?
  - b. What method(s) is (are) employed?
  - c. When relevant, what are the empirical (if any) findings of the chapter or article?
  - d. Anticipate the future study of the topic and the methods likely to be employed.
  - e. Ask yourself if the findings of the chapter or article parallel any discussion of the particular topic in any other readings.
3. **Remember:** class discussion is an important component of this course. Your success and the success of your colleagues depends on it.
4. How to read the readings sheet:
  - a. Readings from Murphy, Pritchett (MPEK) are indicated.
  - b. Chapters from Carp (CSM) and McGuire are indicated by chapter number.
  - c. Readings otherwise are marked with a boldface **ER** are on Electronic Reserve. A course password will be provided in class.

## Course Outline, Reading, and Assignment Schedule

Readings will be announced one class period in advance, according to the following outline and schedule:

### A. Introduction: Overview of the Judicial Process (approximately 1 week)

MPEK: pp. 38-57; 77-102

CSM: Chs. 1-4

Cole: The Decision to Prosecute ER

Feeley: The Effects of Heavy Caseloads ER

McGuire: Ch. 1

MPEK reading # 2.1 (Mather)

### B. Mechanics, Litigants, Lawyers, and Groups (2 weeks)

MPEK: pp. 212-220

MPEK: readings # 5.1 - 5.5 (Turow, Sarat and Felstiner, Blumberg, Bailey, and O'Connor)

CSM: Ch. 8

MPEK: 381-397

MPEK: readings # 9.4, 9.5, 9.6, 9.7, 9.9 (Darrow, Etzioni, Saks, Butler, McCleskey v. Kemp [note: also see McGuire Ch. 4])

MPEK: pp. 253-275

MPEK: readings # 6.4, 6.5, 6.6; 13.2 (Galanter, Vose, Caldiera and Wright, Eisenstein and Jacob)

Heinz, et. al. Lawyers for Conservative Causes ER

McGuire: Ch. 5: Simon & Schuster, Inc. v. NYSCVB

Wold: Going Through the Motions ER

McLauchlan: Managing the Supreme Court's Business, 1971-1983 ER

**\*First paper will cover A and B**

### C. Judges as Decision-Makers I: Selection and Background (2 weeks)

MPEK: pp. 141-161

MPEK: readings # 4.1 - 4.9; 10.8 (Goldman et al., Goldman, Lewis, Roberts, Caldiera and Wright, Segal et al., Walker and Barrow, Marshall, Wold and Culver, Kahn)

McGuire: Ch. 2: the nominations of Robert Bork and Clarence Thomas

CSM: Chs. 6 & 5

Sarat: Judging in Trial Courts ER

Hall: State Supreme Courts in American Democracy ER

Songer, et. al.: A Reappraisal of Diversification in the Federal Courts ER

Ulmer: Are Social Background Models Time-Bound? ER

Crowe and Karpowitz: Where Have You Gone, Sherman Minton? ER



D. Judges as Decision-Makers II: Role Theory (2 weeks)

Gibson: Judges' Role Orientations, Attitudes, and Decisions ER  
MPEK: readings # 8.3, 8.9, 8.10, 10.6 (Segal et al., Kuklinski and Stanga, Gibson et al., Segal and Spaeth)  
Klein and Hume: Fear of Reversal as an Explanation for Lower Court Compliance ER  
Johnson: The Role of the Judiciary with Respect to the Other Branches Of Government ER  
Chayes: The Role of the Judge in Public Law Litigation ER  
CSM: Ch. 12

E. Judges as Decision-Makers III: Small Group Theory (2 weeks)

Murphy: Courts as Small Groups ER  
McGuire: Chs. 3 and 4: S.D. v. Dole; McCleskey v. Kemp  
CSM: Ch. 13  
MPEK: readings # 8.2, 13.3, 13.4, 13.6, 13.7 (Epstein and Knight, Cross and Tiller, Hall, Danelski, Wahlbeck, et al.)  
Howard: On the Fluidity of Judicial Choice ER  
Brenner: Fluidity on the United States Supreme Court: A Reexamination ER  
Gerber & Park: The Quixotic Search for Consensus on the U.S. Supreme Court ER  
Segal: Separation-of-Powers Games in the Positive Theory of Congress and Courts ER  
Segal: Correction ER  
Maltzman and Wahlbeck: Strategic Policy Considerations and Voting Fluidity On the Burger Court ER  
McAtee and McGuire: Lawyers, Justices, and Issue Salience ER  
Howard, Graves, and Flowers: State Courts, the U.S. Supreme Court, and the Protection of Civil Liberties ER

**\*Second paper will cover C-E**

F. Implementation and Impact (3 weeks)

MPEK: pp. 691-705

CSM: Ch. 14

MPEK: readings # 14.1-14.6, 2.4, 2.5 (Canon and Johnson, Slotnick and Segal, Baker v. Carr, Fisher, Rosenberg, McCann, Dahl, Casper)

McGuire: Ch. 6: Buckley v. Valeo

Hoekstra: The Supreme Court and Local Public Opinion ER

Caldeira: Neither Purse Nor Sword: Dynamics of Public Confidence in The Supreme Court ER

Adamany: Legitimacy, Realignment Elections, and the Supreme Court ER

Gibson and Caldeira: Blacks and the United States Supreme Court ER

Canon: The Supreme Court as Cheerleader in Politico-Moral Disputes ER

**\*Final Exam as scheduled by the College**

## WRITTEN ASSIGNMENT INSTRUCTION SHEET

This assignment attempts to provide the student with thoughtful opportunities to understand the judicial process as (1) a branch of government which operates together with and separately from the other branches and (2) a study itself of the courts, laws, and politics and policies. We study the judicial process as a set of operations. We study no less how the judicial process itself is studied.

In-class examinations may not permit students to reflect carefully enough on either of those two objectives. Hence, this assignment focuses on the student's ability to demonstrate her/his analytical reasoning through prepared writing.

### Instructions:

1. The assignment for each paper is to write an analytical essay based on a limited choice of articles read for class [to be announced].
2. Think about the assumptions which underlie the article(s) [assumptions are the basic premises on which the theme of the article(s) is/are founded].
3. Think about the theme or hypothesis of the article(s). Note: this does not mean summarize the article(s). Your instructor has read the articles and knows their summaries.
4. Think about the methods employed in the article(s), based on class discussion, other readings, and lecture. Do the methods appear sound in terms of the theme or hypothesis? In other words, were the methods appropriate to reach the outcome/findings of the articles? Is there linkage between the models and approaches and the results of the research? In other words, do the models work to explain and predict findings?
5. What can you infer from the article(s)? Do you know any more now than you did before reading it/them? Did your reading destroy any images you had? Would you say the article(s) is/are not significant work(s) to be studied and why or why not?

### Specifications:

1. Minimax word/page restraint to be announced.
2. These are not to be reviews or rehash; minimize your reliance on #2 and #3 under the instructions section above.
3. If you read and digest recommended readings or other materials in preparation for the paper, include a bibliography--use the POLS department guide to referencing, at the POLS home page. Bibliographies do not count in your page length constraints. If you must footnote, do so--follow the department guide. **Avoid long quotes as they detract from your analysis.**

4. Precise due dates and further specifications will be announced one calendar week in advance.

5. 75% of your grade on each paper will be based on analytical excellence; 25% will be based on literary coherence (spelling and basic grammar counts). The 25% may be enhanced [i.e., correcting errors] with the consent of the instructor.