COURSE DESCRIPTION

At the completion of this course, students should be able to:

- Understand the nature of courts and the role of the judiciary in the American system of separation of powers, and how that role has evolved over time.
- Discuss the structure of the American judiciary, including judicial federalism and the different roles played by courts of original and appellate jurisdiction.
- Discuss the different methods for selecting judges and their consequences.
- Explain how the U.S. Supreme Court sets its agenda.
- Explain the procedure used by the Supreme Court for deciding cases on the merits, from oral argument to the announcement of a decision.
- Identify the legal and extra-legal influences on judicial voting behavior, including the influence of interest groups, small group dynamics, public opinion, personal biases, and structural rules on judicial decisions.
- Discuss how judicial decisions are implemented or evaded and identify factors that enhance compliance.
- Understand the debate regarding the Supreme Court’s capacity to make social policy.

In this course, we will study the judiciary as an inherently political institution, raising both empirical and normative issues. Empirically, we will attempt to shed light on the extra-legal forces which condition the behavior of courts. These extra-legal forces include things such as the intergovernmental relations, federalism, method of judicial selection, public opinion, interest groups, the press, attorneys, personal ideology and attitudes, among others. We shall highlight areas in which the judiciary behaves like the other branches of government, as well as its distinctive features. Normatively, we will consider how the results of our empirical examination inform the ongoing debate about the proper role of the judiciary in a democratic society. By the end of the semester, you will have the information base required to generate some ideas regarding this question: Given their political nature, to what extent should the courts be involved in the making of policy?

A warning to those who find constitutional law exciting: you won't find much of it here. In this course, we will not be overly concerned about what the courts have said -- that material is covered in PolS 121a, 121b, and 121c. Rather, we will be more interested in why they have said what they have said. However, stripping the judiciary of its mystery is a rewarding task in its own right, and hopefully we will make it an exciting one as well.
Contact Information

Office Location: Clark Hall 457
Phone: (408) 924-5572
Email: jcbrent@email.sjsu.edu

Office Hours: Mondays -- 4:30 to 6:00
Tuesdays -- 8:00 to 9:00 a.m
Tuesdays -- 10:30 a.m. to noon
Thursdays 8:00 to 9:00 a.m.

Textbooks

There are three required textbooks for this course.


Grading

<table>
<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Midterm (Thursday, March 17)</td>
<td>20%</td>
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<tr>
<td>Final Exam (Thursday, May 19 @ 7:15 a.m.)</td>
<td>25%</td>
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<tr>
<td>Participation</td>
<td>10%</td>
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<tr>
<td>Book Outlines</td>
<td>10%</td>
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<tr>
<td>First Draft of Paper (due April 14)</td>
<td>15%</td>
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<tr>
<td>Final Draft of Paper (due May 19)</td>
<td>20%</td>
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Tests   The midterm and the final exam will be closed-book, closed-note exams. Students should bring a blank blue book to each exam. The exams will consist exclusively of essay and short-answer questions. There are no multiple choice questions. The final will stress material from the second half of the course, although it may ask you to refer to material from the first half of the course.

Paper Assignment   This discussed in more detail at the end of this syllabus.

Participation   Participation comprises 10% of your course grade. All students are expected to participate orally in class. I encourage participation because I believe that it aids in the learning process and makes class more interesting.

I do not take attendance, but if you do not attend regularly, you will be unable to participate and will thus lower your grade. This ought not be taken lightly -- while participation constitutes "only" 10% of your grade, if you earn no participation points, this means your final mark will be one full letter grade lower than if you had participated regularly.

Participation is the one component of your grade that is based on quantity rather than quality. I don't care whether you are the most brilliant student in class or the most dim-witted -- if you participate regularly, you will receive a good grade on your participation.
I realize that many students are uncomfortable with participating in class. If you are one of those students, I have two suggestions:

1) Asking questions is just as legitimate as answering questions. I encourage you to ask any questions that you might have. Please do not be afraid of asking "dumb" questions -- I can assure you that there are other students in the class with the same question, and they're not smart enough to ask questions.

2) If you have nothing to say, come and visit me in my office. I can give you a "sneak preview" of the next class, so you can have some time to formulate your opinions. If you really need help, I will tell you something brilliant to say, and then you can raise it in class and seem brilliant to your classmates.

**Book Outlines**  We will be discussing *The Rehnquist Choice* and *The Oath* extensively in class. Prior to participation in these discussions, students will be required to write brief outlines of each chapter in each of the two books. Students who do not submit a paper cannot participate in the in-class discussion. Each outline is worth 5% of your grade.

**Course Policies**

**Makeup Exams** -- I will be the most willing to permit you to take a make-up exam when the following three conditions are met:

1) you notify me in advance
2) you have an acceptable excuse (usually something beyond your control)
3) you have written documentation

Naturally, sometimes it will not be possible to meet these three conditions. Situations which do not do so will be judged by me on a case-by-case basis. I reserve the right to refuse to allow you to make up an exam (although I will usually try to accommodate you). I also reserve the right to make the make-up exam more difficult than the in-class exam.

If you miss an exam, you should approach me the next time you are in class and request a makeup. If approved, I will drop off a test at the Testing Center. You should call the Testing Center (924-5980) to arrange to take the exam.

**Late Papers** -- I am more strict in enforcing penalties against late papers than missed exams! The due date of the paper is not the only day that you may submit your paper. It is merely the last day that you may do so without incurring a penalty. Papers are due at the end of class period on the due date. All late papers, regardless of the excuse, will be penalized by one letter grade.

**Anonymity Policy** -- I like to grade all assignments anonymously. Therefore, you should omit your name on all assignments. Instead, you should only indicate the last four digits of your student ID number. Any assignment that contains your name will not be graded. It will be returned to you so that you may cross out your name and fill in the last four digits of your student ID number.
University-Mandated Statements

Your own commitment to learning, as evidenced by your enrollment at San José State University, and the University's Academic Integrity Policy requires you to be honest in all your academic course work. Faculty are required to report all infractions to the Office of Judicial Affairs. The policy on academic integrity can be found at http://sa.sjsu.edu/student_conduct.

If you need course adaptations or accommodations because of a disability, or if you need special arrangements in case the building must be evacuated, please make an appointment with me as soon as possible, or see me during office hours. Presidential Directive 97-03 requires that students with disabilities register with DRC to establish a record of their disability.

Course Topics and Readings

I. Background: Constitutional and Historic  Carp, et al, Chapters 1, 2 and 4
   A. The Nature of Courts and the American Judicial System
   B. The Constitutional Context
   C. Separation of Powers and the Judiciary
   D. The Structure of the American Judiciary

II. Politics and Policymaking in Appellate Courts
   A. Selection of Judges  Carp et al, Chapter 5
      1. Selection of State Judges
      2. Selection of Federal Judges -- Read all of Dean
   B. Judicial Agenda Setting
   C. Interest Groups and Litigation  Carp et al, Chapter 8
   D. Appellate Procedure  Carp et la, Chapter 13
      1. CASE STUDY: Patterson v. McLean Credit Union (1989)
   E. Political Influences on Judicial Behavior  read all of Toobin;
      1. Race, Gender, and other attributes
      2. Political Ideology
      3. Small Group Influences
      4. The Chief Justice's Role
      5. Public Opinion
   G. The Capacity of Courts to Make Social Policy  Carp, et al, Chapter 15

IV. The Impact of Judicial Decisions  Carp et al, Chapter 14
   A. Conditions for Compliance
   B. The Courts and the Media

V. The Proper Role of the Judiciary Revisited: Activism vs. Restraint
Paper Assignment

There has always been considerable debate about the best procedure to be used to selecting judges. These debates became more urgent after the failed nomination of Robert Bork to the U.S. Supreme Court in 1987, and the issue of filibuster reform is currently one of the hottest topics facing the Senate. For your term paper, you should select one specific proposal regarding how judges are selected and write an argumentative paper in favor or against the proposal you've selected. The most common topics would include but are not limited to:

- Should the Senate abolish filibusters for Supreme Court nominees?
- How should state judges be selected?
- Should the Senate's advice role in the selection of federal judges be enhanced?

Stage 1: The First Draft (due April 14)

Next, students are required to submit a rough draft. This rough draft should be complete -- it should contain the full text of your paper, with proper attribution, grammar, and spelling. You should pretend as though this were the final draft of your paper. This paper should be a minimum of 8 typed, double-spaced pages long, not including the works cited and title pages.

Stage 2: Final Draft (due May 19)

It should be a minimum of 10 typed, double-spaced pages long. This draft should incorporate, to the extent you deem appropriate, the comments made on your first draft.

How Both Drafts Will Be Graded

Both drafts will be graded on the following criteria, in decreasing order of importance:

1) The Depth and Completeness of Your Analysis  This is an analytical paper. Therefore, it should be more than a mere recounting of facts (although it will certainly contain facts, as well). You should make an effort to make comparisons, draw contrasts, spot trends, or otherwise interpret the information that you find.

2) Spelling and Grammar  Papers with extensive spelling and grammatical errors are less credible and will receive a lower grade.

3) Attribution  In an academic paper, you must both provide a bibliography and cite your sources within the text of the paper itself. Papers lacking proper attribution will either receive a lower grade or will be returned to the student without grading for revisions.
4) **Amount of Effort Expended**  Although the quality of a paper is not synonymous with the length of the paper or the number of sources used, the two are closely related. Longer papers, and papers with a greater number of sources, are likely to be more complex and better supported than shorter papers with fewer sources. Therefore, if you only do the minimum that is required, your grade will probably reflect that fact.

5) **The Use of High-Quality Sources**  Some academic sources should be used in a substantial way to support your paper.

6) **Imagination, Insight, Originality, and Other Intangibles**  Finally, the best papers will display certain intangible qualities such as those listed here.

7) **Avoidance of Plagiarism**  All papers will be submitted to turnitin.com and should therefore avoid plagiarism at all costs.