RPOS 344:
PREDICTING SUPREME COURT DECISIONS

Professor: Matt Ingram
Office: Milne Hall 314-A
Dep: 518-442-3248
Ofc: 518-442-3940
Email: mingram@albany.edu

Location: HU 133
Time: TuTh 4:15-5:35
Office Hours (in HU 016): TuTh: 12:30-2:00
or by appointment

Course Description. This course is about judicial behavior in the U.S. Specifically, this course is about understanding, explaining, and predicting judicial decision-making on the U.S. Supreme Court. Why do the justices of the Supreme Court vote the way they do? Why are cases decided in one direction and not another? And how might answers to these questions help us anticipate how the Court might render decisions in the future? Obtaining answers to these questions is important in order to anticipate changes in the law, changes that can have wide-ranging impact on society. To answer these questions, this course closely examines the decision-making process of the Supreme Court of the United States (also called, SCOTUS, USSC, SupCt, or simply SC).

To be clear, this course is not just about simple predictions or guesswork. For instance, in gambling, one might be only interested in whether you guess the correct outcome (e.g., roulette, lottery). In social science, we are not really interested in guesswork. We are more interested in “why” and “how” a particular outcome came about. More generally, social scientists are not in the business of prediction; we are in the business of understanding and explanation, and good explanations can often be used to anticipate or forecast the future. Thus, in this class we are not simply interested in predicting that Judge A will vote one way and Judge B will vote another way. Rather, the goal is to understand and explain this behavior of judges. A natural extension of a strong understanding and explanation of judicial behavior is that we can then better anticipate what judges will do in the future, i.e., we can generate informed predictions of future behavior based on the strength of our understanding, but the core goal is a combination of understanding, explanation, and prediction, not just prediction.

To understand judicial behavior on the nation’s highest court, we need to understand:

- existing explanations of this behavior, including explanations that emphasize the role of both (1) internal factors (e.g., the structure of the court, the rules by which it functions, the composition of the court, the individual ideological and social backgrounds of justices); and (2) external factors (e.g., inter-branch relations, economic conditions, interest group and social movement pressure, media pressure, public opinion);
- information and evidence, i.e., data, are available on the court, justices, and the cases before them;
- tools to help us organize and process data.
The course is structured to address each of the components.

**Part I** of the course briefly reviews the previous year (term) of cases at the SC, and then identifies current cases being heard at the court, highlighting cases that raise fundamental issues about rights, liberties, power, and the structure of our government, including free speech, criminal procedure, voting rights, death penalty, and other major issues. By the end of this initial section of the course, you should have a good sense of which case or set of cases you would like to try to understand, explain, and predict for your presentation at the end of the semester. **Part II** then examines the institutional background of the high court, examining the history, design, and internal rules of the Supreme Court. **Part III** of the course introduces dominant explanations of judicial behavior on the bench, i.e., formal propositions or arguments that seek to account for why individual justices vote the way they do, and why the court decides cases the way it does. With background on current cases (Part I), institutional context (Part II), and theories of judicial behavior (Part III), Part IV then takes a more practical, applied approach to judicial behavior, looking at prior efforts to predict SC behavior and various sources of data and information to build our own explanations of judicial decision-making on the Supreme Court. This part offers a wide range of data sources and also provides some tools to analyze these data. The course culminates with presentations of your prediction(s) on current, undecided cases, including a friendly competition to see who can generate the most correct predictions of cases currently before the Supreme Court (the Court will be issuing decisions throughout the spring, with final decisions on all cases due by the end of June 2017, after our class ends).

Principal course requirements consist of regular quizzes, two mid-term exams, two online activities, and a final prediction project that includes both an in-class presentation and a prediction report (you may work individually or in groups).

**Learning objectives.** Students will be expected to:

- Demonstrate familiarity with the structure and operation of the Supreme Court
- Demonstrate familiarity with key cases (including facts, legal questions, positions of relevant parties, and procedures in lower courts) being considered by Supreme Court in current term (e.g., OT2017)
- Demonstrate familiarity with major theoretical approaches to understanding decision-making behavior of the justices on the Supreme Court
- Demonstrate familiarity with major methodological approaches to understanding decision-making behavior of the justices on the Supreme Court
- Demonstrate familiarity with the difference between prediction and explanation
- Demonstrate the capacity to generate one’s own predictions about the decision-making behavior of justices on the Supreme Court.

**Pre-requisites.** There are no pre-requisites for this course. However, *Introduction to Public Law (RPOS 326)* is strongly recommended. Other recommended courses include *Introduction to American Politics, Constitutional Law, Civil Liberties, Civil Rights, Constitutional Interpretation, and Comparative Judicial Politics*. If you are currently taking any of these courses alongside this course, you should find several points where the courses complement each other.
Requirements

Readings. The main texts for this course are:


Used and new copies of these books are available at campus bookstore and various online booksellers. These books will be supplemented periodically with journal articles and other short readings or online material. Please see the class schedule below for a detailed list of the reading assignments. Articles and other short pieces are available via the electronic databases that can be accessed with through Blackboard or the library. Where otherwise unavailable, I will provide these materials for you. We meet two times per week, and you should read and come prepared in advance of each class.

Grading

- Participation (including attendance): 15%
- Quizzes (20%)
  - Scheduled: 10%
  - Random: 10%
- Mid-term Exams (2): 30% (15% each)
- Online activity: 15%
  - Fantasy SCOTUS
- Prediction Project (20%):
  - Presentation: 10%
  - Report: 10%

Grade Distribution

The final letter grade you receive will correspond with the percentage of total available points that you receive.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>% of total points</th>
<th>Letter Grade</th>
<th>% of total points</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>93-100</td>
<td>C</td>
<td>73-76</td>
</tr>
<tr>
<td>A-</td>
<td>90-92</td>
<td>C-</td>
<td>70-72</td>
</tr>
<tr>
<td>B+</td>
<td>87-89</td>
<td>D+</td>
<td>67-69</td>
</tr>
<tr>
<td>B</td>
<td>83-86</td>
<td>D</td>
<td>63-66</td>
</tr>
<tr>
<td>B-</td>
<td>80-82</td>
<td>D-</td>
<td>60-62</td>
</tr>
<tr>
<td>C+</td>
<td>77-79</td>
<td>E</td>
<td>&lt;59</td>
</tr>
</tbody>
</table>

Attendance and Participation. Active engagement with the material is critical to your success in class. Generally, you need to encounter the material at least three times in order for you to understand it in any depth. For some people, this may be easy to do independently. However, for most people, the easiest and fastest way to encounter the material three times is to (1) read for class, (2) participate in class discussions, and (3) write
notes, outline, or review the material for an exam. Therefore, staying current with the reading, attending class, and participating in class discussion and activities put you in a much better position to work with the material when you take an exam in the course.

Considering the importance of participation and active engagement with the materials, several elements of the course are designed to encourage you to come prepared for each day of class and participate in class discussions and other activities. I generally assume that students start out with 100% of their participation grade, and either do things to consolidate that status or do things to erode and reduce their participation grade. With this in mind, I pay attention to your attendance, participation, and engagement in class. I will take attendance at random, and I will also occasionally call on people at random. If you are missing class, I will notice and this will affect your participation grade. If you are missing class, you will also likely miss random quizzes (see below) and random attendance checks. If I return work in class and you are not there to receive it, this will affect your participation grade. If I call on you and you can demonstrate that you have read and engaged with the material, then you strengthen your participation points. If I call on you and you are not there, or if it is clear you did not read or are otherwise not prepared, I deduct participation points. We will also occasionally break up into smaller groups, and I will note attendance and participation in these sessions.

In short, your attendance, participation, and engagement matter. Your presence and efforts add a lot to class and will be noted; your absence or inability to contribute to class will also be noted.

Separately, classroom conduct can also affect your participation grade. See Classroom Conduct below.

Quizzes. There are two types of quizzes in this class: scheduled and random. Scheduled quizzes are listed in the course schedule and will be online on Blackboard. Random quizzes can occur at any time and usually consist of one or two short questions, and you get an additional point just for being present for the quiz. If you have done the reading for that day, you should not have any trouble with the random quiz. Even if you have not done the reading, you get a point if you at least turn in a paper with your name on it so that I know you were present. I will collect all random quizzes within the first 10 minutes of class. No late random quizzes will be accepted. Either you are in class in first 10 minutes to take the quiz, or you are not.

Mid-Term Exams. There will be two mid-term exams (see schedule). These exams will be comprehensive, covering all material covered up until that point in the course.

Online Activity. All students must enroll in Fantasy SCOTUS and join the “league” I have set up for our class (“UAlbany-RPOS 344-2018”). Information on how to enroll is provided in class schedule below (Week 1). Several activities will flow from our league in Fantasy SCOTUS, including reviewing case materials and casting votes for how individual justices will decide particular cases. I will track all of this activity online and ask for a printed report of you activity at the end of the semester. Details on the format and content of this report will follow later in the semester.
The prediction project consists primarily of two components: (1) in-class presentation, and (2) prediction report. In the presentation, you will have about 5 minutes to describe the case or set of cases you have chosen to explain and predict to the rest of the class, identify the theoretical framework you rely on in your explanation and prediction for the case, and provide a detailed account of how the theoretical framework applies to your case(s). The written report or memorandum will simply document all of this in written form, which you will turn in on the day you give your presentation. The report should be 2-3 pages (Times New Roman, 12-pt font, double-space, 1-inch margins).

To get you started on this project, in Week 2 you will submit a short, 1-page memo (1-inch margins, single-spaced, 12-point Times New Roman font) identifying at least 1 case pending before the Supreme Court that you think you might like to track and examine more closely over the course of the semester. This 1-page memo will be part of your overall grade for the prediction project, and you can build on it later for your presentation and final report.

For the prediction project, you can work in groups of no more than 3 people. However, in order to work in groups, all members of the group must agree to receive the same grade. That is, I will evaluate the group project as a whole and assign a single grade. Each member of the group must agree to this. Also, group members will be asked to provide slightly longer presentations and each member of the group must participate in the presentation.

Additional details on the format and content of the presentation and report will follow later in the course. Presentations and reports that depart from these instructions will receive lower scores.

Class Policies.

Classroom conduct. You are expected to promote a classroom environment that makes it easy for your peers to engage with the material. In this regard, please keep distractions to a minimum. With regards to technology in the classroom, please turn your phones and other handheld devices off during class. Texting during class is unacceptable. Laptop use is allowed for taking notes and other activities relevant to class, but sending emails, messaging, checking social media, or watching videos online is unacceptable. If you are texting, on social media sites, watching videos, or otherwise using technology inappropriately in the classroom, you will be asked to leave for the day. If you are asked to leave, please do so promptly and without disrupting the class further; if you would like to discuss why you were asked to leave, please contact me by email and we can discuss what happened at a later time. If this happens a second time, you will receive a zero (0) for your participation grade for the semester. If you have extraordinary circumstances that justify keeping your phone on during class (e.g., family or medical urgency), please let me know ahead of time, before class starts that day.

Course website. If you are enrolled in this course, you should be automatically enrolled in the Blackboard site for the course. All readings that are not in the assigned books (see
above) will be posted on this site. Also, quizzes may be administered through this site. I expect you to be familiar with this site.

**Email.** I expect you to check your email. You are responsible for material sent by email.

**Late Work and Missed Assignments.** Random quizzes and other written work must be turned in at the beginning of class – no exceptions. No late exams will be given. If you have a legitimate reason for missing class (e.g., medical or family emergency), this explanation must be documented. Without a legitimate and documented explanation, late work will be penalized one letter grade for each day it is late, and it is considered late if turned in beyond the time limits above (i.e., after the first 10 minutes of class, or after 5pm on days there is no class unless another deadline is noted; this includes weekends and holidays).

**Academic Integrity.** All students must familiarize themselves with the *Standards of Academic Integrity* on the University’s website and pledge to observe its tenets in all written and oral work, including oral presentations, quizzes and exams, and drafts and final versions of essays. The full standards and examples of dishonest behavior are available at: [http://www.albany.edu/undergraduate_bulletin/regulations.html](http://www.albany.edu/undergraduate_bulletin/regulations.html).

The most common violation of academic integrity is plagiarism or cheating. My advice is simple: don’t do it. Don’t even think about doing it. Plagiarism is the use of someone else’s words or ideas without giving the original author credit by citing him or her. If you use someone else’s language directly, you must use quotation marks. If you rely on another person’s ideas in creating your argument or shaping your research, you must provide a citation that explicitly acknowledges the source of those ideas. In short, don’t take credit for other people’s words, work, or ideas. If you have any questions about plagiarism, please contact me before you submit the assignment for grading. Plagiarism or cheating will result, at a minimum, in a failing grade for the assignment and the submission of your name to the Office of Conflict Resolution. Ignorance of this policy will not provide a defense to the application of this policy.

**Americans with Disabilities Act (ADA).** Qualified students with disabilities needing appropriate academic adjustments should contact me as soon as possible to ensure your needs are met in a timely manner.

**Counseling and Psychological Services (CAPS).** If you are going through a difficult time (e.g., stress, anxiety, depression, relationship issues, traumatic experience), there are resources on campus to help you. The office on campus that houses these resources is Counseling and Psychological Services (CAPS). Services are free during the academic year, and confidential. Phone: 518-442-5800. Email: consultation@albany.edu. Web: [http://www.albany.edu/counseling_center/](http://www.albany.edu/counseling_center/)

**Miscellaneous.** If you feel you need any help or simply want clarification on any of the material, please do not hesitate to raise your question in class or approach me outside of class. I will hold regular office hours throughout the summer session. If you cannot arrange
to come talk with me during these hours, please call or email me, or contact the Department of Political Science administrative offices, so that we can set up an appointment.

**Changes to Syllabus.** I will modify and update this syllabus throughout the semester. I will announce these updates, and the current version of the syllabus will always be on Blackboard.

**Additional Resources:**

(1) Websites
- a. U.S. Supreme Court: [https://www.supremecourt.gov/](https://www.supremecourt.gov/)
- b. Oyez: [https://www.oyez.org/](https://www.oyez.org/)
- c. Fantasy SCOTUS: [https://fantasycotus.lexpredict.com/](https://fantasycotus.lexpredict.com/)
- d. SCOTUS Blog: [www.SCOTUSblog.com](http://www.SCOTUSblog.com)
- g. Vox Supreme Court: [https://www.vox.com/scotus](https://www.vox.com/scotus)
- h. Supreme Court Review: [http://supremecourtreview.com/](http://supremecourtreview.com/)
- i. Supreme Court Database: [http://scdb.wustl.edu/](http://scdb.wustl.edu/)
- j. Supreme Court Forecasting Project: [http://wusct.wustl.edu/](http://wusct.wustl.edu/)

(2) Blogs
- a. Supreme Court Blog: [www.scotusblog.com](http://www.scotusblog.com)

(3) Podcasts

(4) Professional Associations
- a. Law & Courts Section of American Political Science Association: [http://www.law.nyu.edu/lawcourts](http://www.law.nyu.edu/lawcourts)
- b. Law & Society Association (LSA): [http://www.lawandsociety.org](http://www.lawandsociety.org)

(5) Other sites:
- c. World Treaty Index: [http://worldtreatyindex.com](http://worldtreatyindex.com)
- d. Computational Legal Studies: [http://computationallegalstudies.com](http://computationallegalstudies.com)

(6) Some relevant journals:
- a. International Journal of Constitutional Law
- b. Journal of Empirical Legal Studies
- c. Journal of Law, Economics, and Organization
- d. Journal of Legal Studies
- e. Judicature
f. Justice System Journal

h. Law and Society Review
CLASS SCHEDULE

Introductions

WEEK 1: Jan 23, 25

I. Introductions
Introductions; overview of course

II. “Calm before the storm”? Review of OT2016 (last year’s cases)

- Reading:
  - Liptak (2017), “A Cautious Supreme Court Sets a Modern Record for Consensus”
  - Other resources:
    - Federal Judicial Center, “Term in Review”
      - Part 1: https://www.youtube.com/watch?v=qTXtdqcAUrE
        - Covers cases related to First, Fourth, Fifth, and Sixth Amendments, and Patent Law and Redistricting
      - Part 2: https://www.youtube.com/watch?v=sPdi7JD9k1g
        - Covers cases related to Bankruptcy, Liability, Sentencing Guidelines, Standing, Statutory Interpretation
    - UC Irvine annual event (home site: http://www.law.uci.edu/events/supreme-court-term-review/)
      - YouTube video: https://www.youtube.com/watch?v=-e41PagGvK8&feature=youtu.be
    - National Women’s Law Center
    - Wired
      - https://www.wired.com/2011/06/scotus-mixed-bag/

PART I: Getting to Know the Cases

WEEK 2: Jan 30, Feb 1

- Reading
  - Adler (2017), “A Supreme Court Term for the Ages”
  - Review summaries of all current cases on these three websites:
    - OYEZ
      - https://www.oyez.org/cases/2016
      - this site has a clean interface and accessible presentation of facts and legal questions raised in each case
      - note that can sort cases various ways
SCOTUS Blog, Merit Cases for October Term 2016
- Note that can sort cases by date or name

Fantasy SCOTUS
- https://fantasyscotus.lexpredict.com/

- Additional resources
  - Supreme Court website:
    - www.supremecourt.gov
  - ABA Preview
    - Look at highlighted articles from current term
    - Also see online access here:
  - ABA and Woodrow Wilson Center: “On the Docket”
    - This is a 90-minute webcast that preview current docket with brief summaries of prominent cases
    - Note:
      - To skip initial introductions, jump to: minute 8
      - To skip initial introductions and brief summary of previous term (OT 2015), skip to: minute 18:40
      - Discussion of OT 2016 is organized into four themes (fair housing,
  - Legal Information Institute (LII), Cornell University Law School, LII Bulletin Previews:
  - Georgetown Supreme Court Institute, Term Preview
  - ACLU:
  - AMICUS podcast

- DO
  - At home:
    - Enroll in Fantasy Scotus and join class league “UAlbany-RPOS 344-Spring2018”
      - If link does not work, copy and paste this url in your browser: https://fantasyscotus.lexpredict.com/
      - Browse website and become familiar with how to use site, including how to find cases, review materials for each case, and how to case your own predictions
WEEK 3: Feb 6, 8

- Continue Getting to Know the Cases
- DUE on Tuesday: 1-page memo for prediction project (see Syllabus, p.4).

PART II: Getting to Know the Court

WEEK 4: Feb 13, 15

- Reading
  - Segal and Spaeth, Ch. 1 (for Tue)
  - Segal and Spaeth, Ch. 4 (for Thur)
  - Review SC website:
    - https://www.supremecourt.gov/
  - Review biographies of current justices
    - OYEZ: https://www.oyez.org/justices
    - USSC: https://www.supremecourt.gov/about/biographies.aspx
  - Review Court procedure (in plain English)
  - Review Supreme Court Database (SCDB)
    - http://scdb.wustl.edu/
- Recommended
  - Segal and Spaeth, Ch. 5: “Staffing the Court”
  - Segal and Spaeth, Ch. 6: “Getting into Court”

QUIZ 1 (opens online Thursday after class)

PART III. Approaches to Predicting Supreme Court Decisions

WEEK 5: Feb 20, 22

- To Predict or Not to Predict? (Jan 25)
  - Reading
    - Shmueli (2010)
- Supreme Court Forecasting Project
  - Reading
    - Symposium on “Forecasting U.S. Supreme Court Decisions” (read these in following order)
      - Epstein 2002
      - Martin et al. 2002
      - Sherry 2002
• Caldeira 2002
• Greenhouse 2002
• Silbey 2002

  ▪ Suggested
  ▫ Explore project website:

**WEEK 6: Feb 27, Mar 1**

  • **Reading**
    ○ Symposium on “Forecasting U.S. Supreme Court Decision” (CONT.)
    ○ Kastellec (2010); only pp. 1-12

  • **Demonstration**
    ○ Modeling tools in R and RStudio

**MID-TERM 1 (opens online Friday morning)**

**PART III: Getting to Know Dominant Explanations**

**WEEK 7: Mar 6, 8**

  • **Reading: Legal Model**
    ○ Segal and Spaeth, Ch. 2 and Ch. 7
    ○ Kastellec (2010); finish article (already read pp. 1-12)

**NO CLASS ON MAR 13, 15; SPRING BREAK, MARCH 12-16**

  *** * * March 19 is Midterm Point of Semester * * * **

**WEEK 8: Mar 20, 22**

  • **Reading: Attitudinal Model**
    ○ Segal and Spaeth, Ch. 3, pp. 86-97; and Ch. 8, pp. 312-326

**WEEK 9: Mar 27, 29**

  • **Reading: Strategic or SOP Model**
    ○ Epstein and Knight, Ch. 1-3

    • Optional recommended reading:
      ○ Segal and Spaeth, Ch. 3, pp. 97-114; and Ch. 8, pp. 326-349
      ○ Epstein and Knight, Ch. 4
o Epstein and Knight, Ch. 5
o Posner, How Judges Think?
o Epstein, Landes, and Posner (2013), Ch. 1 and Ch.2
o Lawrence Baum

QUIZ 2

PART IV: Tools for Developing a Prediction Approach

WEEK 10: Apr 3, 5
• Reading
  o Data Sources
    ▪ SCOTUSstatpack
    ▪ SCDB at WUSTL
    ▪ Epstein, Landes, Posner book site
  o Journalistic accounts
    ▪ See links in SCOTUSblog
    ▪ Read: Harlan, “The Role of Oral Argument” (Bb)

WEEK 11: Apr 10, 12
• Reading
  o Epstein, Landes, Posner (Ch. 3)
o Review data sources and tools (cont.)
• Demonstrations
  o Epstein, Landes, Posner (Ch. 3 examples)

WEEK 12: Apr 17
• Reading: Data analysis of SCDB
  o Review SCDB here: http://scdb.wustl.edu/
• DO
  o At home:
    ▪ Review analysis tools here: http://scdb.wustl.edu/analysis.php
  o In class:
    ▪ use analysis tools here: http://scdb.wustl.edu/analysis.php
    ▪ use other analysis tools

*** No Class April 19 ***

PROF. INGRAM AT CONFERENCE AT END OF THIS WEEK
Continue reviewing data and analysis tools at SCDB Website and with R and RStudio
Study for Midterm 2

MID-TERM 2 (opens online Friday morning)
WEEK 13: Apr 24, 26

- continue use of analysis tools
- begin in-class presentations
  - NOTE: final prediction reports will be submitted at the time of your in-class presentation

WEEK 14: May 1, 3

- In-class presentations

WEEK 15: May 8

LAST DAY OF CLASS IS TUESDAY, MAY 8

- Finish presentations
- Recap semester