

Honors 303/Political Science 326  
Fall 2001  
Office Hours: MW 1:30-2:15  
and by appointment

Judicial Decision Making  
Mr. Pacelle  
Office: SSB Tower 905  
Phone: 516-6745 (voice mail)  
Class: MW 2:30-3:45

### **Plan and Purpose of the Course**

The decisions issued by the United States Supreme Court have enormous implications for the litigants in the case (just ask George Bush and Al Gore), lower courts, government, and society as a whole (every 124 years, the Court even decides an election). Contrary to the judicial myth, justices and the Supreme Court are policy-makers. Indeed in a number of areas, the Court is at the center of the charting of national public policy. Thus, it is important to analyze and understand the process by which the Court makes its decisions and policies. The purpose of this seminar is to investigate the processes by which cases get to the Supreme Court, are accepted or denied, and are decided. The means for investigating this process will be a semester long simulation. Students will assume the roles of the justices, the Solicitor General, litigants, and other actors in the judicial system. Nine students will be the Supreme Court for the first half of the semester and the remainder will be external actors responsible for bringing cases to the "Supreme Court." The "justices" will decide whether to accept these cases and then the cases will be argued before the Court and judgments rendered. At the midsemester, the roles will change and those who were justices will become litigants and those who were litigants will assume the roles of the justices. The first few class sessions will be dedicated to explaining the simulation and providing the class with some background into the Court's processes. After that, the simulation will begin and continue throughout the remainder of the semester.

### **Class Procedures**

For the first few sessions we will discuss the procedures of the Supreme Court. Having accomplished that, we will turn our attention to the simulation itself. The following roles will be available:

#### **JUSTICES**

Chief Justice William Rehnquist  
Justice John Paul Stevens  
Justice Sandra Day O'Connor  
Justice Antonin Scalia  
Justice Anthony Kennedy  
Justice David Souter  
Justice Clarence Thomas  
Justice Ruth Bader Ginsburg  
Justice Stephen Breyer

Everyone will be a justice at some time during the semester. During their tenure on the Court, students will be responsible for learning their justice's background, values and attitudes, and personality. The goal is then to select cases, vote on the merits of the cases, and write majority, concurring, and dissenting opinions as their justices would.

#### LITIGANTS

Washington Legal Foundation

American Civil Liberties Union

National Association for the Advancement of Colored Persons: Legal Defense Fund

National Organization for Women

United States Government

National Association of Business

State Governments

Criminal Defendants

Legal Services Corporation

Everyone will represent a group that litigates before the Court. During your service in this capacity, the student will be responsible for learning how the relevant group acts and what types of cases and strategies the group pursues. The goal is then to develop organizational goals and pursue them by bringing cases, entering other cases, and arguing those cases the Court accepts.

### **Student Responsibilities**

Heavy. So there are no surprises later, the workload in this class will be heavy. Students will have a great deal of reading to do and a great deal of independent research. That research will be used in the various written assignments. Class attendance and participation are essential. Justices and litigants will also need to keep a journal explaining the actions attendant to their roles. Within these strictures, students will have a great deal of input and freedom to investigate areas that appeal to them. The success or failure of this seminar will depend upon the students.

Student responsibilities thus consist of six components:

**I. Reading:** there is a common body of material all students must read. Other readings are role specific. Students portraying justices will need to read the material on Court procedures, case selection, and decision-making, as well as studies of the individual justice each represents. Those portraying litigants will need to read general sources about the litigation process and the role of groups in bringing cases. Students will also read materials specific to the group or litigant they represent.

**II. Research:** litigants and justices need justification for their actions. The support for the positions taken by those bringing the cases and those deciding them must be discovered. Litigants writing

briefs and arguing cases need to discover relevant precedents to buttress their positions. The sources to be used are listed in the Readings section *infra*. Justices writing opinions will need to refer to relevant case law in order to compose their opinions. The sources for precedents are listed in the Readings section *infra*.

**III. Writing:** at the outset of each section, each student portraying a justice will write a paper explaining the background, values and attitudes, philosophies, and role conception of the justice that student represents. Those assuming the role of a litigant will be required to write a position paper explaining the group's activities, goals, and strategies. As the simulation unfolds, the justices will be required to decide the cases brought to them and author opinions for the Court, whether those opinions are majority opinions, concurrences, or dissents. The various litigants will be required to write briefs seeking Court review of potential cases, briefs supporting their cases when they are argued, and briefs supporting other litigants with similar concerns.

**IV. Class Attendance and Participation:** this is mandatory. The justices will need to have conferences to decide which cases they will accept and eventually how to decide those cases. The justices need also be present for the oral arguments as the various cases are argued before the Court. Litigants will seek assistance from other litigants and argue accepted cases before the Court.

**V. Journal:** all students must keep a daily journal explaining their activities and actions. Justices should enter their votes on each case seeking review, including a brief statement to explain these votes. In addition, justices need to explain their votes on the merits of the case and what they decided to do concerning the writing or joining of opinions. Litigants should use the journal to explain the cases they bring, why they decided to help or refuse to assist other groups, and how they are attempting to meet the organization's goals through the various strategies.

**VI. Role Behavior:** all of the preceding is directed to the faithful representation of the justice or litigant in question. In other words, how well does the student perform the role of justice or litigant. Are the proper cases being brought, are they well prepared and argued, and do they fulfill the strategies designed to achieve the organizational goals? Are the proper cases accepted and are the justices deciding the cases as they should?

Failure to satisfy one or more of these components will jeopardize the student's grade. The grading philosophy will be explained in class. The instructor will be available for consultation on any of the assignments and to assess the progress of the students in fulfilling the various roles. Examinations and quizzes are not planned. Thus the grade will be determined on the basis of these components and the amount of work students put in to fulfill their roles.

## Reading

The reading that each student has to do can be grouped in a series of categories:

**I. General Supreme Court Literature:** Each student will be required to read Lawrence Baum, *The Supreme Court* (sixth edition) and/or David O'Brien, *Storm Center* (fourth edition). These books explain the judicial process and put the Court in its political and institutional context. Everyone should also read Lee Epstein and Jack Knight, *The Choices Justices Make*, a description of strategic decision making and small groups analysis. In addition, you may want to read Kevin McGuire, *Understanding the U.S. Supreme Court*.

**II. Specific Process Literature:** A series of articles and book chapters will be required of all justices and all litigants. There are a variety of readings that will serve this function. These readings explain the general processes of the Court or interest groups in the judicial realm. Any general text on the Supreme Court will do.

**III. Constitutional and Statutory Doctrine:** Students will also need sources that will describe the Court's decisions and doctrines in the various policy areas. These books will be treated as the sources of the precedents the justices will use in their decisions and the litigants will use to derive ideas for petitions to the Court. It is recommended that students obtain access to Henry Abraham and Barbara Perry, *Freedom and the Court* (seventh edition) or C. Herman Pritchett, *Constitutional Civil Liberties* and C. Herman Pritchett, *Constitutional Law of the Federal System* or John Nowak, Ronald Rotunda, and J. Nelson Young, *Constitutional Law*, a law school hornbook. Students should also have access to a recent Constitutional law textbook. I recommend Thomas Hensley, Christopher Smith, and Joyce Baugh, *The Changing Supreme Court: Constitutional Rights and Liberties*, which has a great deal about the justices. Lee Epstein and Thomas Walker, *Constitutional Law for a Changing America: Rights, Liberties, and Justice*, a good political science treatment, or Susan Leeson and James Foster *Constitutional Law in Context*, which has a great deal about litigants' briefs.

**IV. Specific Role Oriented Readings:** Each student will also be required to read materials that pertain to the roles they will assume. There are a variety of readings that should be read by everyone to establish the context for justices and litigants. Then there are specific materials for each role. Thus, when students are assuming the roles of the various justices, they will need to read biographical sketches of the relevant justice. Students who represent litigants will also have a series of readings to help them more fully assume their roles.

The readings will be grouped by section below.

Please do not panic, the following readings are not required of anyone or everyone. Most are suggested readings that will help you develop the various roles. You are free to substitute relevant readings you may know. Each individual should consult with the instructor to determine the appropriate set of readings. Obviously the more you read, the better prepared you will be to fulfill your role. Many of these sources need not be read in depth and should be used as reference material to help design cases or decide them. From time to time, I may add to this list. In addition, I will provide the class with materials that will facilitate the execution of the simulation. Articles marked

with an \* are particularly important.

## Reading List

### I. General Supreme Court Literature

\*Lawrence Baum, *The Supreme Court*, sixth edition, 1998.

\*David O'Brien, *Storm Center*, fourth edition, 1996.

\*Kevin McGuire, *Understanding the U.S. Supreme Court*, 2001.

Richard Pacelle, *The Role of the Supreme Court in American Politics: The Least Dangerous Branch?* (2002)

Rodney Smolla, *A Year in the Life of the Supreme Court*, 1995.

Stephen Wasby, *The Supreme Court and the Federal Judiciary Process*, fourth edition, 1993.

Robert McKeever, *Raw Judicial Power? The Supreme Court and the American Society*, second edition, 1995.

John Semonche, *Keeping the Faith: A Cultural History of the U.S. Supreme Court*, 1998.

Cass Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court*, 1999.

Henry Abraham, *The Judiciary: The Supreme Court in the Governmental Process*, tenth edition, 1996.

Thomas Walker and Lee Epstein, *The Supreme Court of the United States: An Introduction*, 1992.

Mark Cannon and David O'Brien, eds. *Views from the Bench*, 1985.

Congressional Quarterly, *Guide to the U.S. Supreme Court*, third edition, 1996.

Kermit Hall, ed., *Oxford Guide to the United States Supreme Court Decisions*, 1999.

Congressional Quarterly, *The Supreme Court: A to Z*, 1993.

Kermit Hall, ed., *The Oxford Companion to The Supreme Court of the United States* (1992).

Joan Biskupic, *The Supreme Court Yearbook*: an annual.

Kenneth Jost, *The Supreme Court Yearbook*: an annual.

David O'Brien, *The Supreme Court Watch*: an annual.

### **A. Judicial Philosophies**

Ronald Kahn, *The Supreme Court & Constitutional Theory: 1953-1993*, 1994.

Christopher Wolfe, *Judicial Activism: Bulwark of Freedom or Precarious Security*, 1991

Leslie Goldstein Friedman, *In Defense of the Text*, 1991.

Robert Bork, *The Tempting of America: The Political Seduction of the Law*, 1990.

Leslie Friedman Goldstein, "By Consent of the Governed: Directions in Constitutional Theory" in Lee Epstein, ed. *Contemplating Courts*, 1995, pp. 275-295.

Judith Baer, "The Fruitless Search for Original Intent" in Michael McCann and Gerald Houseman, ed. *Judging the Constitution*, 1989, pp. 49-71.

Michael McCann and Gerald Houseman, eds., *Judging the Constitution*, 1989.

Charles A. Lamb, "Judicial Restraint on the Supreme Court" in Stephen Halpern and Charles Lamb, *Supreme Court Activism and Restraint*, 1982, chapter 1.

John Roche, "Judicial Self-Restraint" in Peter Woll, *American Government*, seventh edition, 1981, pp. 538-544 or eighth edition, 1984, pp. 530-536.

Robert DiClerico and Allan Hammock, *Points of View*, third edition, 1986, chapter 13.

Marvin Schick, "Judicial Activism on the Supreme Court" in Stephen Halpern and Charles Lamb, eds. *Supreme Court Activism and Restraint*, 1982, chapter 2.

William Rehnquist, "The Notion of a Living Constitution" in Mark Cannon and David O'Brien, eds. *Views from the Bench*, 1985, chapter 12.

William Justice, "A Relativistic Constitution" in *Views from the Bench*, 1985, chapter 13.

Dallin Oaks, "When Justices Litigate" *Views from the Bench*, 1985, chapter 14.

J. Clifford Wallace, "The Jurisprudence of Judicial Restraint: A Return to the Moorings" in *Views from the Bench*, 1985, chapter 15.

Frank Johnson, "Judicial Activism is a Duty--Not an Intrusion" in *Views from the Bench*, 1985, chapter 26.

John Hart Ely, *Democracy and Distrust*, 1977.

Howard Markey, "On the Cause and Treatment of Judicial Activism" in *Views from the Bench*, 1985, chapter 27.

T. Alexander Alienikoff, "Constitutional Law in an Age of Balancing" *Yale Law Journal*, 96 (April 1987): 943-1005.

Alexander Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*, 1986.

Jesse Choper, *Judicial Review and the National Political Process: A Functional Reconsideration of the Role of the Supreme Court*, 1980.

Ralph Winter, "The Activist Judicial Mind" in *Views from the Bench*, 1985, chapter 28.

Arthur Miller, *Toward Increased Judicial Activism: The Political Role of the Supreme Court*, 1982.

**B. Rules of Access:** The best sources for the rules of access are the Constitutional Law texts.

C. Herman Pritchett, *Constitutional Law of the Federal System*, 1984, chapter 8.

David Rohde and Harold Spaeth, *Supreme Court Decision-Making*, 1976, chapter 1.

Phillipa Strum, *The Supreme Court and "Political Questions"*, 1974.

Louis Fisher, *American Constitutional Law*, 1994, chapter 3.

Lee Epstein and Thomas Walker, *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 1998.

## **II. Specific Process Literature**

### **A. Court Procedures**

Robert Stern and Eugene Gressman, *Supreme Court Practice*, seventh edition, 1993.

Joseph Menez, *Decision Making in the Supreme Court of the United States*, 1984.

\*Lawrence Baum, *The Supreme Court*, sixth edition, 1998.

William Rehnquist, *The Supreme Court*, 1987.

Mark Cannon and David O'Brien, eds. *Views from the Bench*, 1985.

Jeffery Segal and Harold Spaeth, *The Supreme Court Attitudinal Model*, 1993.

### **1. Case Selection, Case Screening, and Caseload Regulation**

Samuel Estreicher and John Sexton, *Redefining the Supreme Court's Role*, 1986.

\*Joseph Tanenhaus, Marvin Schick, Matthew Muraskin, and Daniel Rosen, "The Supreme Court's Certiorari Jurisdiction: Cue Theory" in Glendon Schubert ed., *Judicial Decision Making 1963*, pp. 111-132.

Doris Marie Provine, *Case Selection in the United States Supreme Court*, 1980.

S. Sidney Ulmer, "Selecting Cases for Supreme Court Review: An Underdog Model" *American Political Science Review*, 72 (September 1978): 902-910.

\*H. W. Perry, Jr., *Deciding to Decide: Agenda Setting in the Supreme Court*, 1992.

Richard Pacelle, *The Transformation of the Supreme Court's Agenda: From the New Deal to the Reagan Administration*, 1991, chapters 2, 6, 7.

John Paul Stevens, "Deciding What to Decide: The Docket and the Rule of Four" in *Views from the Bench*, 1985, chapter 8.

\*S. Sidney Ulmer, "Conflict with Supreme Court Precedent and the Granting of Plenary Review" *Journal of Politics*, 45 (May 1983): 474-478.

H.W. Perry, "Agenda Setting and Case Selection" in *The American Courts*, chapter 9, pp. 235-253.

Gregory Caldeira and John Wright, "The Discuss List: Agenda Building in the Supreme Court" *Law & Society Review*, 24 (1990): 807-836.

S. Sidney Ulmer, "The Supreme Court's Certiorari Decisions: Conflict as a Predictive Variable" *American Political Science Review*, 78 (December 1984): 901-911.

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

Saul Brenner and John Krol, "Strategies in Certiorari Voting on the United States Supreme Court" *Journal of Politics*, 51 (November 1989): 828-840.

Gerhard Casper and Richard Posner, "A Study of the Supreme Court's Caseload" *Journal of Legal Studies*, 3 (June 1974): 339-375.

Donald R. Songer, "Concern for Policy Outputs as a Cue for Supreme Court Decisions on Certiorari" *Journal of Politics*, 41 (November 1979): 1185-1194.

Gregory Caldeira, "The United States Supreme Court and Criminal Cases, 1935-1976: Alternative Models of Agenda Building" *British Journal of Political Science*, 11 (October 1981): 449-470.

Arthur Hellman, "Error Correction, Lawmaking, and the Supreme Court's Exercise of Discretionary Review" *University of Pittsburgh Law Review*, 44 (Summer 1983): 795-877.

Arthur Hellman, "The Supreme Court, the National Law and the Selection of Cases for the Plenary Docket" *University of Pittsburgh Law Review*, 44 (Spring 1983): 521-634.

## **2. Judicial Decision-Making**

\*Jeffrey Segal and Harold Spaeth, *The Supreme Court and the Attitudinal Model*, 1993.

\*Cornell Clayton and Howard Gillman, eds., *Supreme Court Decision-Making*, 1999.

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

Lee Epstein, Valerie Hoekstra, Jeffrey Segal, and Harold Spaeth, "Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices" 60 *Journal of Politics* (August 1998): 801-818.

Lawrence Baum, *The Puzzle of Judicial Behavior*, 1997.

Jeffrey Segal and Harold Spaeth, *Majority Rule or Minority Will: Adherence to Precedent on the*

*U.S. Supreme Court*, 1999.

Timothy Cheney, *Who Makes the Law: The Supreme Court, Congress, the States, and Society*, 1998.

William Eskridge, *Dynamic Statutory Interpretation*, 1994.

William Eskridge, "Reneging on History? Playing the Court/Congress/President Civil Rights Game" 79 *California Law Review* (1991): 613-684.

Paul Wahlbeck, "The Life of the Law: Judicial Politics and Legal Change" 59 *Journal of Politics* (August 1997): 778-802.

Louis Fisher, *Constitutional Dialogues: Interpretation as Political Process*, 1988.

Louis Fisher and Neal Devins, *Political Dynamics of Constitutional Law*, 1992.

Sheldon Goldman and Thomas Jahnige, *The Federal Courts as a Political System*, third ed., 1985, chapter 5.

Alice Fleetwood Bartee, *Cases Lost, Causes Won*, 1984, chapters 2-3.

William J. Brennan, Jr., "How the Supreme Court Arrives at a Decision" in Peter Woll, *American Government*, eighth edition, 1984, pp. 550-558.

Richard L. Williams, "Justices Run 'Nine Little Law Firms' at the Supreme Court" in *Annual Editions*, 86/87, pp. 130-135.

David Rohde and Harold Spaeth, *Supreme Court Decision Making*, 1976.

Harold Spaeth, *Supreme Court Policy Making*, 1979.

Saul Brenner and Harold Spaeth, *Stare Indecisis* 1995.

Howard Ball, *Judicial Craftsmanship or Fiat?*, 1978

### **a. Background**

C. Neal Tate, "Personal Attribute Models of the Voting Behavior of the U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions" *American Political Science Review*, 75 (June 1981): 355-367.

S. Sidney Ulmer, "Social Background as an Indicator to the Votes of Supreme Court Justices in Criminal Cases" *American Journal of Political Science*, 17 (August 1973): 622-630.

C. Neal Tate and Roger Handberg, "Time Binding and Theory Building in Personal Attribute Models of Supreme Court Voting Behavior, 1916-88" *American Journal of Political Science*, 35 (May 1991): 460-480.

S. Sidney Ulmer, "Are Social Background Models Time-Bound?" *American Political Science Review*, 80 (September 1986): 957-967.

## **b. Attitudes and Values**

\*Jeffrey Segal and Harold Spaeth, *The Supreme Court and the Attitudinal Model*, 1993

\*David Rohde and Harold Spaeth, *Supreme Court Decision-Making* 1976, chapter 7.

Harold Spaeth, "The Attitudinal Model" in Lee Epstein, ed. *Contemplating Courts*, 1995, pp. 296-314.

Saul Brenner and Harold Spaeth, *Stare Indecisus: The Alteration of Precedent on the Supreme Court, 1946-1992*, 1994.

\*Jeffrey Segal, "Supreme Court Justices as Human Decision Makers: An Individual-Level Analysis of the Search and Seizure Cases" *Journal of Politics*, 48 (November 1986): 938-955.

Harold Spaeth, *Supreme Court Policy Making*, 1979, chapters 5-6.

Jeffrey Segal, "Measuring Change on the Supreme Court: Examining Alternative Models" *American Journal of Political Science*, 29 (August 1985): 465-479.

Jeffrey Segal and Harold Spaeth, "Decisional Trends on the Warren and Burger Courts: Results from the Supreme Court Data Base Project" *Judicature*, 73 (August-September 1989): 103-107.

\*Jeffrey Segal and Albert Cover, "Ideological Values and the Votes of U.S. Supreme Court Justices" *American Political Science Review*, 83 (June 1989): 557-566.

\*Jeffrey Segal, Lee Epstein, Charles Cameron, and Harold Spaeth, "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited" *57 Journal of Politics* (August 1995): 812-823.

James Gibson, "Decision Making in Appellate Courts" in *The American Courts: A Critical*

*Assessment* ed. John Gates and Charles Johnson, 1990, chapter 10.

*Harvard Law Review*: Annual Reports on the Supreme Court Term. Includes a doctrinal analysis and a number of statistical analyses, including majority opinions, 5-4 votes, voting alignments.

### **c. Small Group Processes in Decision-Making**

\*Lee Epstein and Jack Knight, *The Choices Justices Make*, 1998.

\*David Savage, *Turning Right: The Making of the Rehnquist Supreme Court*, 1992.

\*James Simon, *The Center Holds: The Power Struggle Inside the Rehnquist Court*, 1995.

Bernard Schwartz, *Decision: How the Supreme Court Decides Cases*, 1996.

Bob Woodward and Scott Armstrong, *The Brethren*, 1979.

\*Walter Murphy, *Elements of Judicial Strategy*, 1964, chapter 3.

Edward Lazarus, *Closed Chambers: The First Eyewitness Account of the Epic Struggles Inside the Supreme Court*, 1998.

J. Woodford Howard, "On the Fluidity of Judicial Choice" *American Political Science Review*, 62 (March 1968): 43-56.

Eloise Snyder, "The Supreme Court as a Small Group" *Social Forces*, 36 (March 1958): 232-238.

\*David J. Danelski, "The Influence of the Chief Justice in the Decisional Process of the Supreme Court" in Sheldon Goldman and Austin Sarat, eds. *American Court Systems*, 1978, pp. 506-519.

Joseph Kobylka, "Leadership in the Supreme Court of the United States: Chief Justice Burger and the Establishment Clause" *Western Political Quarterly*, 42 (December 1989): 545-568.

David Rohde, "Policy Goals, Strategic Choices, and Majority Opinion Assignments in the United States Supreme Court" *Midwest Journal of Political Science*, 16 (November 1972): 652-682.

Elliot Slotnick, "Who Speaks for the Court? Majority Opinion Assignment from Taft to Burger" *American Journal of Political Science*, 23 (February 1979): 60-77.

Saul Brenner, "Fluidity on the United States Supreme Court: A Reexamination" *American Journal of Political Science*, 24 (August 1980): 526-535.

Saul Brenner, "Fluidity on the Supreme Court: 1956-1967" *American Journal of Political Science*, 26 (May 1982): 388-390.

S. Sidney Ulmer, "Toward A Theory of Sub-Group Formation in the United States Supreme Court" *Journal of Politics*, 27 (February 1965): 133-152.

Edward Heck and Melinda Gann Hall, "Bloc Voting and the Freshman Justice Revisited" *Journal of Politics*, 43 (August 1981): 852-860.

Harold Spaeth and Michael Altfeld, "Influence Relationships Within the Supreme Court: A Comparison of the Warren and Burger Courts" *Western Political Quarterly*, 38 (March 1985): 70-83.

Thomas Walker, Lee Epstein, and William Dixon, "On the Mysterious Demise of Consensual Norms in the United States Supreme Court" *Journal of Politics*, 50 (May 1988): 361-389.

Robert J. Steamer, *Chief Justice: Leadership and the Supreme Court*, 1986.

Lewis Powell, "What Really Goes on at the Supreme Court" in *Views from the Bench*, 1985, chapter 6.

William Rehnquist, "The Supreme Court's Conference" in *Views from the Bench*, 1985, chapter 7.

Saul Brenner and Harold Spaeth, "Issue Specialization in Majority Opinion Assignment on the Burger Court" *Western Political Quarterly* 39 (September 1986): 520-527.

Saul Brenner and Harold Spaeth, "Ideological Position as a Variable in the Authoring of Dissenting Opinions on the Warren and Burger Courts" *American Politics Quarterly* 16 (July 1988): 317-328.

Laura Krugman Ray, "The Justices Write Separately: Uses of the Concurrence by the Rehnquist Court" *University of California-Davis Law Review* 23 (Spring 1990): 777-831.

The White Burkett Miller Center, *The Office of the Chief Justice*, 1984.

#### **d. Judicial Role**

J. Woodford Howard, "Role Perceptions and Behavior in Three U.S. Courts of Appeals" *Journal of Politics* 39 (November 1977): 916-938.

Dorothy James, "Role Theory and the Supreme Court" *Journal of Politics* 30 (March 1968):

160-186.

James Gibson, "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model" *American Political Science Review* 72 (September 1979): 911-924.

Jeffrey Segal and Harold Spaeth, "The Influence of *Stare Decisis* on the Votes of United States Supreme Court Justices" 40 *American Journal of Political Science* (November 1996): 971-1003.

Richard Brisbin, "Slaying the Dragon: Segal, Spaeth and the Function of Law in Supreme Court Decision Making" 40 *American Journal of Political Science* (November 1996): 1004-1017.

Jack Knight and Lee Epstein, "The Norm of *Stare Decisis*" 40 *American Journal of Political Science* (November 1996): 1018-1035.

Saul Brenner and Marc Stier, "Retesting Segal, Spaeth's *Stare Decisis* Model" 40 *American Journal of Political Science* (November 1996): 1036-1048.

Donald Songer and Stefanie Lindquist, "Not the Whole Story: The Impact of Justices Values on Supreme Court Decision Making" 40 *American Journal of Political Science* (November 1996): 1049-1063.

Jeffrey Segal and Harold Spaeth, "Norms, Dragons, and *Stare Decisis*: A Response" 40 *American Journal of Political Science* (November 1996): 1064-1082.

### **3. Opinion Writing**

T. R. Van Geel, *Understanding Supreme Court Opinions*, 1991.

\*Walter Murphy and C. Herman Pritchett, "Precedents and Legal Reasoning" chapter 10 in *Courts, Judges, and Politics*, 1986.

Walter Murphy and C. Herman Pritchett, "Statutory Interpretation" chapter 11 in *Courts, Judges, and Politics*, 1986.

\*Walter Murphy and C. Herman Pritchett, "Constitutional Interpretation" chapter 12 in *Courts, Judges, and Politics*, 1986.

Craig Ducat, *Modes of Constitutional Interpretation*, 1978.

Lief Carter, *An Introduction to Constitutional Interpretation*, 1991

Lief Carter, *Reason In Law*, fifth edition, 1997.

Lief Carter, *Contemporary Constitutional Lawmaking*, 1985.

Walter Schaefer, "Precedent and Policy: Judicial Opinions and Decision Making" in Mark Cannon and David O'Brien, eds. *Views from the Bench*, 1985, chapter 10

Lief Carter, *Constitutional Interpretation*, 1998.

Harold Spaeth, *Supreme Court Policy Making*, 1979, chapter 3.

David Rohde and Harold Spaeth, *Supreme Court Decision-Making*, 1976, chapter 2.

## **B. Political Litigation**

\*Lee Epstein and Joseph Kobylka, *The Supreme Court and the Legal Change: Abortion and the Death Penalty*, 1992.

\*Charles Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Court in Comparative Perspective*, 1998.

John Harlan, "The Role of Oral Arguments" in Mark Cannon and David O'Brien, eds. *Views from the Bench*, 1985, chapter 9.

David Truman, *The Governmental Process*, 1951, chapter 15.

Clement E. Vose, "Litigation as a Form of Pressure Group Politics" *The Annals*, 319 (September 1958): 20-31.

\*Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change" *Law & Society Review*, 9 (Fall 1974): 95-160.

James Spriggs and Paul Wahlbeck, "Amicus Curiae and the Role of Information at the Supreme Court" *Political Research Quarterly* 50 (June 1997): 365-387.

Robert Scigliano, *The Supreme Court and the Presidency*, 1971, chapter 6.

Kevin McGuire, *The Supreme Court Bar: Legal Elites in the Washington Community*, 1993.

Donald Songer and Reginald Sheehan, "Interest Group Success in the Courts: Amicus Participation in the Supreme Court" *Political Research Quarterly* 46 (June 1993): 339-354.

Reginald Sheehan, William Mishler, and Donald Songer, "Ideology, Status, and the Differential Success of Direct Parties Before the Supreme Court" *American Political Science Review* 86 (June 1992): 464-471.

Karen O'Connor and Lee Epstein, "Amicus Curiae Participation in U.S. Supreme Court Litigation: An Appraisal of Hakman's 'Folklore'" *Law & Society Review*, 16 (1981-1982): 311-320.

Lee Epstein and C.K. Rowland, "Debunking the Myth of Interest Group Invincibility in the Courts" *American Political Science Review*, 85 (March 1991): 205-217.

Karen O'Connor and Lee Epstein, "The Rise of Conservative Interest Group Litigation" *Journal of Politics*, 45 (May 1983): 479-489.

Kevin McGuire, "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success" *Journal of Politics* 57 (February 1995): 187-196.

Joseph Kobylka, "A Court Related Context for Group Litigation: Libertarian Groups and Obscenity" *Journal of Politics*, 49 (November 1987): 1061-1078.

Lee Epstein, "Courts and Interest Groups" in *The American Courts*, chapter 13, pp. 335-371.

Stephen Wasby, "How Planned is 'Planned Litigation'?" *American Bar Foundation Research Journal*, (Winter 1984): 83-138.

Karen O'Connor, *Women's Organizations' Use of the Courts*, 1980.

Nathan Hakman, "Lobbying the Supreme Court--An Appraisal of 'Political Science Folklore'" *Fordham Law Review*, 35 (October 1966): 15-50.

Lee Epstein, *Conservatives in Court*, 1985.

Lincoln Caplan, *The Tenth Justice*, 1988.

James Cooper, "The Solicitor General and the Evolution of Activism" *Indiana Law Journal*, 65 (Summer 1990): 675-696.

Jeffrey Segal, "Supreme Court Support for the Solicitor General: The Effects of Presidential Appointments" *Western Political Quarterly*, 42 (March 1990): 137-152.

Jeffrey Segal, "Amicus Curiae Briefs by the Solicitor General During the Warren and Burger Courts" *Western Political Quarterly*, 41 (March 1989): 135-144.

Susan M. Olson, "The Political Evolution of Interest Group Litigation" in Gambitta, May, and Foster, *Governing Through Courts*, 1981, chapter 11.

Clement E. Vose, "Litigation as a Form of Pressure Group Politics" *The Annals*, 319 (September 1958): 20-31.

Frank J. Sorauf, *The Wall of Separation: The Constitutional Politics of Church and State*, 1976, chapter 6.

Karen O'Connor and Lee Epstein, "The Role of Interest Groups in Supreme Court Policy Formation" in Robert Eyestone, ed., *Public Policy Formation*, 1984.

Nancy Daly, "*Amicus Curiae* and the Public Interest: A Search for a Standard" *Law & Policy* 12 (October 1990): 389-420.

Samuel Krislov, "The *Amicus Curiae* Brief: From Friendship to Advocacy" *Yale Law Journal* 72 (March 1963): 694-721.

Kay Lehman Schlozman and John Tierney, *Organized Interests and American Democracy*, 1986, chapter 14.

Nan Aron, *Liberty and Justice for All*, 1989.

Areyh Neier, *Only Judgment: The Limits of Litigation in Social Change*, 1982.

Gregory Caldeira and John Wright, "Organized Interests and Agenda Setting in the U.S. Supreme Court" *American Political Science Review*, 82 (November 1988): 1109-1128.

Karen O'Connor and Lee Epstein, "Court Rules and Workload: A Case Study of Rules Governing *Amicus Curiae* Participation" *Justice Systems Journal* 8 (Spring 1983): 35-45.

\*Gregory Caldeira and John Wright, "*Amicus Curiae* Before the Supreme Court: Who Participate, When and How Much" *Journal of Politics* 51 (August 1990): 782-806.

Peter Irons, *The Courage of Their Convictions: Sixteen Americans Who Fought Their Way to the Supreme Court*, 1988

Robert Bradley and Paul Gardner, Jr., "Upperdogs, Underdogs, and the Use of the *Amicus* Brief: Trends and Explanations" *Justice Systems Journal*, 10 (Spring 1985): 78-96.

Bruce Ennis, "Effective *Amicus* Briefs" *Catholic University Law Review*, 33 (Spring 1984):

603-609.

Burton Weisbrod, ed. *Public Interest Law*, 1978.

H.W. Perry, Jr., *Deciding to Decide: Agenda Setting in the Supreme Court*, 1992.

Richard Pacelle, *The Transformation of the Supreme Court's Agenda: From the New Deal to the Reagan Administration*, 1991, chapters 2, 6, 7.

### **III. Constitutional and Statutory Doctrine**

#### **A. Constitutional Law Texts:**

Thomas Hensley, Christopher Smith, and Joyce Baugh, *The Changing Supreme Court: Constitutional Rights and Liberties*, 1997.

Lee Epstein and Thomas Walker, *Constitutional Law for a Changing America: Rights, Liberties, and Justice*, third edition, 1998.

Susan Leeson and James Foster *Constitutional Law in Context*, 1998.

David O'Brien, *Constitutional Law and Politics: Civil Liberties and Civil Rights*, third edition 1997. Updated annually with the *Supreme Court Watch*.

Twilley Barker, Michael Combs, Kevin Lyles, and Lucius Barker, *Civil Liberties and the Constitution: Cases and Commentaries*, eighth edition, 1999.

Otis Stephens and John Scheb, *American Constitutional Law*, second edition, 1998.

Malcolm M. Feeley and Samuel Krislov, *Constitutional Law*, second edition, 1990.

Sheldon Goldman, *Constitutional Law and Supreme Court Decision Making: Cases and Essays*, second edition, 1987.

Louis Fisher, *American Constitutional Law*, second edition 1994.

Alpheus Thomas Mason and Donald Grier Stephenson, Jr., *American Constitutional Law: Introductory Essays and Selected Cases*, twelfth edition, 1999.

Joel B. Grossman and Richard S. Wells, *Constitutional Law & Judicial Policy Making*, third edition, 1988.

Craig Ducat, *Constitutional Interpretation*, 1995. Updated annually with supplements.

Walter Murphy, James Fleming, and Sotirios Barber, *American Constitutional Interpretation*, second edition, 1995.

Daniel Farber, William Eskridge, and Phillip Frickey, *Constitutional Law: Themes for the Constitution's Third Century*, second edition, 1997.

Ralph Rossum and G. Alan Tarr, *American Constitutional Law: The Bill of Rights and Subsequent Amendments*, 1999.

Other recent Constitutional Law textbooks are acceptable.

**B. Civil Liberties and Civil Rights-General:** These books deal with the substance of the Court decisions in the various areas broadly conceived of as civil liberties and civil rights. The typical framework is a discussion of the Court cases that comprise these areas with attempts to synthesize the Court's precedents to determine the nature of policy and principle and how they have evolved.

Abraham Davis and Barbara Luck Graham, *The Supreme Court, Race, and Civil Rights*, 1995.

Henry J. Abraham and Barbara Perry, *Freedom and the Court*, seventh edition, 1998.

\*Andrea L. Bonnicksen, *Civil Rights and Liberties*, 1982.

John Brigham, *Civil Liberties & American Democracy*, 1984.

\*C. Herman Pritchett, *Constitutional Civil Liberties*, 1984.

Joan Biskupic and Elder Witt, *The Supreme Court and Individual Rights*, third edition, 1996.

H.L. Pohlman, *Constitutional Debates in Action*, 1995.

Girardeau Spann, *Race Against the Court: The Supreme Court and Minorities in Contemporary America*, 1993.

Donald Jackson, *Even the Children of Strangers: Equality Under the U.S. Constitution*, 1992.

Melvin Urofsky, *The Continuity of Change: The Supreme Court and Individual Liberties*, 1991

Vincent Blasi, ed. *The Burger Court*, 1983.

Herman Schwartz, ed. *The Burger Years: Rights and Wrongs in the Supreme Court*, 1986.

Raymond Arsenault, ed. *Crucible of Liberty: 200 Years of the Bill of Rights*, 1991

Gerald Rosenberg, *The Hollow Hope*, 1991.

Robert Peck, *The Bill of Rights and the Politics of Interpretation*, 1991.

Darien McWhirter and Jon Bible, *Privacy as a Constitutional Right*, 1992

**C. Governmental Powers and Economic Issues:** The following books contain general and specific evaluations of the state of the law in the various economic areas or in the areas of governmental relations. This category refers to federalism and disputes involving the powers of the other branches of government.

\*C. Herman Pritchett, *Constitutional Law of the Federal System*, 1984.

Vincent Blasi, ed. *The Burger Court*, 1983.

Herman Schwartz, ed. *The Burger Years: Rights and Wrongs in the Supreme Court*, 1986.

Cass Sunstein, *After the Rights Revolution: Reconceiving the Regulatory State*, 1990.

Paul Weiler, *Governing the Workplace: The Future of Labor and Employment Law*, 1990.

Ernest Gellhorn and Ronald Levin, *Administrative Law and Process in a Nutshell*, fourth edition, 1997.

Thomas Jackson, *The Logic and Limits of Bankruptcy Law*, 1986.

Lief Carter and Christine Harrington, *Administrative Law and Politics*, second edition, 1998.

Christopher Edley, *Administrative Law: Rethinking Judicial Control of Bureaucracy*, 1990

Richard Epstein, *Takings: Private Property and the Power of Eminent Domain*, 1985.

Douglas Whitman and John William Gergacz, *The Legal and Social Environment of Business* fourth edition, 1994.

Roger Meiners, Al Ringleb, and Frances Edwards, *The Legal Environment of Business*, sixth

edition, 1997.

Rate Howell, John Allison, N. T. Henley, *The Legal Environment of Business*, second edition, 1987.

**D. Specific Area Studies:** While the books in the preceding section span entire fields of litigation, there are a series of more narrow studies that concentrate on one specific area within the larger fields of civil liberties, civil rights, economic regulation, and governmental powers. There are studies of freedom of speech, freedom of religion, criminal procedure, equal protection for minorities, regulation of business and industry, federalism and the like. Cited below are the best of this literature. The general books in the preceding section and the books in the subsequent section on individual litigants can be used to supplement or substitute for these studies. The best strategy would be to choose from a variety of sources.

**1. First Amendment: Freedom of Speech:** Freedom of speech actually refers to a whole series of Court cases dealing with freedom of expression, symbolic speech, and an area called "speech plus" that refers to cases involving protest, marches, demonstrations, signs, and the like.

Franklyn S. Haiman, *Speech and Law in a Free Society*, 1981.

Thomas Tedford, *Freedom of Speech in the United States*, third edition, 1997.

Kenneth Karst, ed., *The First Amendment*, 1990.

William W. Van Alstyne, *Interpretations of the First Amendment*, 1984.

Richard Delgado and Jean Stefanic, *Must We Defend Nazis? Hate Speech, Pornography, and the New First Amendment*, 1997.

Robert Richards, *Freedom's Voice: The Perilous Present and Uncertain Future*, 1999.

Franklyn S. Haiman, *"Speech Acts" and the First Amendment*, 1993.

Kent Greenawalt, *Fighting Words: Individual, Communities, and Liberties of Speech*, 1995.

Samuel Walker, *Hate Speech*, 1994.

Cass Sunstein, "Free Speech Now" *University of Chicago Law Review* 59 (Winter 1992): 255-316.

Lois Forer, *A Chilling Effect: The Mounting Threat of Libel and Invasion of Privacy Actions to the First Amendment*, 1987.

Steven Shiffrin, *The First Amendment, Democracy, and Romance*, 1990.

W. Wat Hopkins, *Actual Malice*, 1989.

Richard Labunski, *Libel and the First Amendment*, 1987.

William Franosis, *Mass Media Law and Regulation*, fifth edition, 1992.

Harvey Zuckman and Martin Gaynes, *Mass Communication Law in a Nutshell*, third edition, 1989.

Randall Bezanson, Gilbert Cranberg, and John Soloski, *Libel Law and The Press: Myth and Reality*, 1987.

Geoffrey Robertson and Andrew Nicol, *Media Law*, second edition, 1990.

**2. First Amendment: Freedom Of Religion:** Free Exercise and Establishment: There are two parts to the First Amendment religion protections. One part protects the freedom to worship, the other protects people from having the state impose, establish, or aid one religion at the expense of others. These two clauses are frequently in conflict. There have been so many recent decisions in these areas that the books cited below are somewhat dated, even if they were published only a few years ago. The general books dealing with civil liberties and civil rights cited above and the Constitutional Law texts are probably the best sources for the recent cases.

Henry J. Abraham and Barbara Perry, *Freedom and the Court*, seventh edition, 1998.

Robert Miller and Ronald Flowers, *Toward Benevolent Neutrality: Church, State, and the Supreme Court*, fifth edition, 1996.

Stephen Monsma, *Positive Neutrality: Letting Religious Freedom Ring*, 1993.

Leonard Levy, *The Establishment Clause: Religion and the First Amendment*, second edition revised, 1994.

Leo Pfeffer, *Religion, State, and the Burger Court*, 1984.

Matthew Staver, *Faith & Freedom*, 1995.

Edward Keynes and Randall Miller, *Court Versus Congress: Prayer, Busing, and Abortion*, 1989.

Robert L. Cord, *Separation of Church and State*, 1982.

Lief Carter, *An Introduction to Constitutional Interpretation: Cases in Law and Religion*, 1991.

Abner Greene, "The Political Balance of the Religion Clauses" *Yale Law Journal* 102 (May 1993): 1611-1644.

Michael McConnell, "Religious Freedom at a Crossroads" *University of Chicago Law Review* 59 (Winter 1992): 115-194.

Jesse Choper, "The Rise and Decline of the Constitutional Protection of Religious Liberty" *Nebraska Law Review* 70 (1991): 651-688.

Kenneth Karst, "Religious Freedom and Equal Citizenship: Reflections on *Lukumi*" *Tulane Law Review* 69 (December 1994): 335-372.

Michael McConnell, "Free Exercise Revisionism and the *Smith* Decision" *University of Chicago Law Review* 57 (Fall 1990): 1109-1153.

**3. Criminal Procedure:** Few areas of Constitutional Law have been as controversial as protecting the rights of the accused. The Warren Court expanded the rights of the accused markedly. This is also the area of the clearest differences between the Warren and Burger Courts. Once again, there are few studies that have been able to keep up with the recent decisions the Court continues to hand down. The general civil liberties books and the Constitutional Law texts contain the most recent decisions.

Richard Leo, ed., *The Miranda Debate: Law, Justice, and Policing*, 1998.

Liva Baker, *Miranda: Crime, Law, and Politics*, 1983.

Henry J. Abraham and Barbara Perry, *Freedom and the Court*, seventh edition, 1998.

Akhil Reed Amar, *The Constitution and Criminal Procedure: First Principles*, 1997.

Craig Bradley, *The Failure of the Criminal Procedure Revolution*, 1993.

Stanley Friedelbaum, *The Rehnquist Court in Pursuit of Judicial Conservatism*, 1994.

Stephen Saltzburg and Daniel Capra, *American Criminal Procedure: Cases and Commentary*, 1996.

Alfred Garcia, *The Sixth Amendment in Modern Jurisprudence*, 1992.

R.H. Helmholz, *The Privilege Against Self-Incrimination: Its Origins and Development*, 1997.

John Scheb, *Criminal Law and Procedure*, 1999.

Daniel Grano, *Confessions, Truth and the Law*, 1993.

Stephen Saltzburg, Daniel Capra, and Catherine Hancock, *Basic Criminal Procedure*, 1997.

Joseph Cook, *Constitutional Rights of the Accused*, second edition, 1985.

John Klotter and Jacqueline Kanovitz, *Constitutional Law*, sixth edition, 1990.

Wayne LaFare and Jerold Israel, *Criminal Procedure*, 1993. Law School Hornbook.

William Wilbanks, *The Myth of a Racist Criminal Justice System*, 1987.

Samuel Walker, *Sense and Nonsense About Crime*, fourth edition, 1997.

Hugo Bedau, *The Death Penalty in America: Current Controversies*, 1997.

Steven Grossman, "Proportionality in Noncapital Sentencing: The Supreme Court's Tortured Approach to Cruel and Unusual Punishment" *Kentucky Law Journal* 84 (1995): 107-172.

John Bursch, "The Four R's of Drug Testing in Public Schools: Random is Reasonable and Rights are Reduced" *Minnesota Law Review* 80 (May 1996): 1221-1254.

*Annual Editions, Criminal Justice*, 1997, 1998, 1999.

**4. Equal Protection: Rights of Minorities:** This is another area that needs updating in light of recent Supreme Court trends. The Constitutional Law texts, particularly Barker and Barker, and the supplements are the best current sources. Much of the available research focuses on school desegregation and the later issues arising from this such as affirmative action.

Abraham Davis and Barbara Luck Graham, *The Supreme Court, Race, and Civil Rights*, 1995.

Brian Landsberg, *Enforcing Civil Rights: Race Discrimination and the Department of Justice*, 1997.

Robert Weiss, *"We Want Jobs": A History of Affirmative Action*, 1997.

Terry Eastland, *Ending Affirmative Action*, 1996.

Raymond Wolters, *Right Turn: William Bradford Reynolds, the Reagan Administration, and Black Civil Rights*, 1996.

Leonard Steinhorn and Barbara Diggs-Brown, *By the Color of Our Skin: The Illusions of Integration and the Reality of Race*, 1999.

Stephen Halpern, *On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act*, 1995.

J. Harvie Wilkerson, *From Brown to Bakke: The Supreme Court and School Integration: 1954-1978*, 1979.

Timothy O'Neill, *Bakke and the Politics of Equality*, 1985.

Paul Brest, "Race Discrimination" chapter 6 in Vincent Blasi, *The Burger Court*, 1983.

Michael Combs and John Gruhl, eds., *Affirmative Action: Theory, Analysis, and Prospects*, 1986.

**5. Equal Protection: Gender Discrimination:** The Court continues to tinker with this area of the law which means none of the sources will be definitive and changes will continue to unfold. Constitutional Law texts and the general civil rights books are the best sources for the most recent changes in the law.

Neal Devins, *Shaping Constitutional Values: Elected Government, the Supreme Court, and the Abortion Debate*, 1996.

Joan Hoff, *Law, Gender, and Injustice: A Legal History of U.S. Women*, 1991.

Leslie Friedman Goldstein, *The Constitutional Rights of Women*, new edition, 1988.

Susan Gluck Mezey, *In Pursuit of Equality: Women, Public Policy, and the Federal Courts*, 1992

Nancy Levit, *The Gender Line: Men, Women, and the Law*, 1999.

Leslie Friedman Goldstein, *Contemporary Cases in Women's Rights*, 1994.

Deborah Rhode, *Justice and Gender*, 1989.

Eva Rubin, *The Supreme Court and the American Family: Ideology and Issues*, 1986.

Michael Thomson, *Reproducing Narrative: Gender, Reproduction, and the Law*, 1999.

Patricia Cain, "Feminism and the Limits of Equality." In D. Kelly Weisberg, ed. *Feminist Legal Theory: Foundations*, 1993.

Karen O'Connor, *No Neutral Ground?: Abortion Politics in an Age of Absolutes*, 1996.

Laurence Tribe, *Abortion: The Clash of Absolutes*, 1990.

Barbara Craig and David O'Brien, *Abortion and American Politics*, 1993.

Susan Clayton and Faye Crosby, *Justice, Gender, and Affirmative Action*, 1992.

Claire Sherman Thomas, *Sex Discrimination*, 1992. In a Nutshell series.

Lois Forer, *Unequal Protection: Women, Children, and the Elderly in Court*, 1991.

Harry Krause, *Family Law in a Nutshell*, third edition, 1991.

Robin West, "Jurisprudence and Gender" *University of Chicago Law Review* 55 (Winter 1988): 1-72.

Jerry Jacobs, *Revolving Doors: Sex Segregation and Women's Careers*, 1990.

Catharine MacKinnon, *Toward a Feminist Theory of the State*, 1989.

Catharine MacKinnon, *Feminism Unmodified*, 1987.

Katherine Bartlett and Roseann Kennedy, eds., *Feminist Legal Theory: Readings in Law and Gender*, 1991.

**6. Economic and Business Regulation:** The Supreme Court has less involved in these issues in the past few decades, but these areas have enjoyed a recent resurgence. In addition, the cases the Court does accept and decide in the regulatory realm are usually very significant.

Warren Samuels and Arthur Miller, *Corporations and Society: Power and Responsibility*, 1987.

Nicholas Wolfson, *Corporate First Amendment and the SEC*, 1990.

George Skouras, *Takings Law and the Supreme Court: Judicial Oversight of the Regulatory State's*

*Acquisition, Use, and Control of Private Property*, 1998.

David Callies, ed., *Takings: Land-Development Conditions and Regulatory Takings After Dolan and Lucas*, 1996.

Bernard Siegan, *Property and Freedom: The Constitution, the Courts, and Land Use Regulation*, 1997.

Milton Handler, *Trade Regulation: Cases and Materials*, 1996.

David Schultz, *Property, Power, and American Democracy*, 1992.

Benjamin Taylor and Fred Witney, *Labor Relations Law*, 1995.

Howard Anderson and John Kenny, *A Primer for Labor Relations*, twenty-third edition, 1989.

Herbert Hovencamp, *Antitrust*, 1993.

Douglas Leslie, *Labor Law in a Nutshell*, third edition 1992.

Marshall Howard, *Antitrust and Trade Regulation*, 1983.

Herbert Hovencamp, *Economics and Federal Antitrust Law*, 1993.

R. S. Markovits, "The Burger Court, Antitrust, and Economic Analysis" chapter 9 in Vincent Blasi, *The Burger Court*, 1983.

Donald Farole, *Interest Groups and Judicial Federalism: Organizational Litigation in State Judiciaries*, 1998.

**7. Governmental Powers and Federalism:** The Court is frequently called upon to draw the boundaries between the two branches of government. These are questions the Court would rather not address, but finds itself compelled to answer.

John V. Orth, *The Judicial Power of the United States: The Eleventh Amendment in American History*, 1986.

Peter Hay, *Conflict of Laws*, 1994.

Donald Farole, *Interest Groups and Judicial Federalism: Organizational Litigation in State Judiciaries*, 1998.

Joseph Zimmerman, *Federal Preemption: The Silent Revolution*, 1991

M. David Gelfand, *Federal Constitutional Law and American Local Government*, 1984.

David J. McCarthy, Jr., *Local Government Law in a Nutshell*, 1995.

Jack Davies, *Legislative Law and Process*, second edition, 1986.

William Brennan, "Guardians of Our Liberties: State Courts No Less than Federal" in *Views from the Bench*, 1985, chapter 21.

Hans Linde, "First Things First: Rediscovering the State's Bills of Rights" in *Views from the Bench*, 1985, chapter 22.

**8. Legal Services Commission:** This is a residual category to be used for issues affecting what many label the one-shotters, individuals and groups without frequent recourse to the courts.

Susan Lawrence, *The Poor in Court*, 1990.

Robert Jarvis, *AIDS Law in a Nutshell*, second edition, 1996.

Christopher Smith, *Courts and the Poor*, 1991.

Russell Galloway, *The Rich and the Poor in Supreme Court History*, 1982.

David Epstein, *Debtor-Creditor Law in a Nutshell*, fourth edition, 1991.

David Hill, *Landlord and Tenant Law in a Nutshell*, third edition, 1994.

John McNulty, *Federal Income Taxation of Individuals*, fifth edition, 1995.

David Epstein, *Bankruptcy and Other Debtor-Creditor Law in a Nutshell*, 1995.

#### **IV. Specific Role Oriented Readings**

**A. Individual Justices:** Each justice needs to form a biographical sketch. The following articles will provide background analyses, voting patterns, the justice's conception of the judicial role, and a look at the individual's personality. Each of these will be important components that will need to be synthesized in order to present a full look at the justice.

**1. General:** These studies will place the justices in the context of the Court. The goal is to be able to understand the behavior and decision patterns of the justices. Other studies of the process, Court doctrine, and Constitutional Law decisions can help paint a broader picture of the various justices.

\*Henry J. Abraham, *Justices, Presidents, and Senators: A History of U.S. Supreme Court Appointments from Washington to Clinton*, 1999.

Mark Silverstein, *Judicious Choices: The New Politics of Supreme Court Confirmations*, 1994.

Christopher Smith, *Critical Judicial Nominations and Political Change: The Impact of Clarence Thomas*, 1993.

Leon Friedman and Fred Israel, ed. *The Justices of the United States Supreme Court: Their Lives and Major Opinions*, 1995.

**2. Biographies:** These studies will provide you with the backgrounds of the justices as a means of understanding some of the influences upon their behavior.

Clare Cushman, ed. *The Supreme Court Justices: Illustrated Biographies, 1789-1995*, second edition, 1995.

Congressional Quarterly, *Guide to the U.S. Supreme Court*, third edition, 1996.

**3. Individual Behavior:** The following pieces discuss the judicial behavior often in different policy areas of the various justices. These should be used as a guide to the voting behavior and decision patterns of the justices.

\*James Simon, *The Center Holds: The Power Struggle Inside the Rehnquist Court*, 1995.

\*David Savage, *Turning Right: The Making of the Rehnquist Court*, 1992. Pay attention to the portrayals of the justices.

Tinsley Yarbrough, *The Rehnquist Court and the Constitution*, 2000.

Stephen Gottlieb, *Morality Imposed: The Rehnquist Court and Liberty in America*, 2000.

Stanley Friedelbaum, *The Rehnquist Court in Pursuit of Judicial Conservatism*, 1994.

Richard Pacelle, "The Dynamics and Determinants of Agenda Change in the Rehnquist Court" in

Lee Epstein, ed., *Contemplating Courts*, 1995, chap. 11.

*Nova Law Review*, "The Rehnquist Years: A Supreme Court Retrospective" 23 (Spring 1998): 695-761.

D.F.B. Tucker, *The Rehnquist Court and Civil Rights*, 1995.

J. Harvie Wilkinson, "The Rehnquist Court and the Search for Equal Justice" *Tulsa Law Journal* 34 (Fall 1998): 41-65.

Marie Garibaldi, "The Rehnquist Court and State Constitutional Law" *Tulsa Law Journal* 34 (Fall 1998): 67-83.

Christopher Smith and Thomas Hensley, "Assessing the Conservatism of the Rehnquist Court" *Judicature* 77 (September-October 1993): 83.

Jeanmarie Grubert, "The Rehnquist Court's Changed Reading of the Equal Protection Clause in the Context of Voting Rights" *Fordham Law Review* 65 (March 1997): 1819-1854.

Christopher Smith and Avis Alexandria Jones, "The Rehnquist Court's Activism and the Risk of Injustice" *Connecticut Law Review* 26 (Fall 1993): 53-77.

Michael Comiskey, "The Rehnquist Court and American Values" *Judicature* 77 (March-April 1994).

Bob Woodward and Scott Armstrong, *The Brethren*, 1979. Pay attention to the portrayals of the justices.

#### **a. Chief Justice William Rehnquist**

Peter Irons, *Brennan v. Rehnquist: The Battle for the Constitution*, 1994.

Sue Davis, *Justice Rehnquist and the Constitution*, 1989.

Donald Boles, *Mr. Justice Rehnquist, Judicial Activist: The Early Years*, 1987.

Derek Davis, *Original Intent: Chief Justice Rehnquist and the Course of American Church/State Relations*, 1991.

*Rutgers Law Journal*, "Perspectives on Chief Justice Rehnquist" 25 (Spring 1994): 557-697.

Sue Davis, "Power on the Court: Chief Justice Rehnquist's Opinion Assignment" *Judicature*, 74 (August-September 1990): 66-72.

David Rohde and Harold Spaeth, "Ideology, Strategy, and Supreme Court Decisions: William Rehnquist as Chief Justice" *Judicature*, 72 (December-January 1988): 247-250.

Warren Weaver, "The Chief Justice" in *8 Men and a Lady*, 1990.

John Denvir, "Judging Justices: Rehnquist, Brennan, and the Question of Judicial Method" *University of Toledo Law Review* 22 (Spring 1991): 757-775.

Stephen Massey, "Justice Rehnquist's Theory of Property" *Yale Law Journal* 83 (January 1984): 541-560.

Eric Segall, "The First Amendment in a Justice Rehnquist World" *DePaul Law Review* 44 (Spring 1995): 825-839.

John Denvir, "Justice Rehnquist and Constitutional Interpretation" *Hastings Law Journal* 34 (May 1983): 1011-1053.

Sue Davis, "Justice Rehnquist's Equal Protection Clause: An Interim Analysis" *Nebraska Law Review* 63 (Spring 1984): 288-313.

Robert Riggs and Thomas Proffitt, "The Judicial Philosophy of Justice Rehnquist" *Akron Law Review* 16 (Spring 1983): 555-604.

John Riemenschneider, "The Judicial Philosophy of William H. Rehnquist" *Mississippi Law Journal* 45 (January 1974): 224-245.

John Gates and Timothy Phelps, "The Myth of Jurisprudence: Interpretative Theory in the Constitutional Opinions of Justices Rehnquist and Brennan" *Santa Clara Law Review* 31 (Summer 1991): 567-596.

Frank Guliuzza, "Protecting Judicial Leadership: Did Rehnquist Prefer to Switch Rather than Fight?" *Williamette Law Review* 29 (Spring 1993): 151-190.

Thomas Kleven, "The Constitutional Philosophy of Justice William H. Rehnquist" *Vermont Law Review* 8 (Spring 1983): 1-54.

Lincoln Caplan, "Rehnquist: New and Improved?" *ABA Journal* 75 (January 1989): 40.

Sue Davis, "Justice William Rehnquist" in *The Burger Court: Political and Judicial Profiles*, 1991,

chapter 11.

Jeff Powell, "The Compleat Jeffersonian: Justice Rehnquist and Federalism" *Yale Law Journal* 8 (June 1982): 1317-1370.

Sue Davis, "Justice Rehnquist's Judicial Philosophy: Democracy v. Equality" *Polity* 17 (Fall 1984): 88-117.

Lori Wentworth, "Justice Harlan, Justice Rehnquist, and the Values of Federalism" *New York Law School Review* 36 (Spring-Summer 1991): 255-286.

Robert C. Lind, Jr., "Justice Rehnquist: First Amendment Speech in the Labor Context" *Hastings Constitutional Law Quarterly* 8 (Fall 1980): 93-123.

Glenn Phelps and Timothy Martinez, "Brennan v. Rehnquist: The Politics of Constitutional Jurisprudence" *Gonzaga Law Review* 22 (1986/87): 307-325.

Richard Weisberg, "How Judges Speak, Some Lessons on Adjudication in Billy Budd, Sailor with an Application to Justice Rehnquist" *New York University Law Review* 57 (April 1982): 1-69.

William Luneburg, "Justice Rehnquist, Statutory Interpretation, the Policies of Clear Statement and Federal Jurisdiction" *Indiana University Law Journal* 58 (Spring 1982-83): 211-285.

Bruce Comly French, "The Views of Justice Rehnquist Concerning the Proper Role of the States in National Labor Relations Policy" *Tulsa Law Journal* 17 (Fall 1981): 76-96.

Ursula Bentele, "Chief Justice Rehnquist, the Eighth Amendment, and the Role of Precedent" *American Criminal Law Review* (Fall 1991): 267-321.

George Wright, "A Contractual Approach to Due Process" *Valparaiso Law Review* (Spring 1987): 527-561.

Andrew Jay McClurg, "Logical Fallacies and the Supreme Court: A Critical Examination of Justice Rehnquist's Decisions in Criminal Procedure Cases" *University of Colorado Law Review* 59 (Fall 1988): 741-844.

Alan Bigel, "William H. Rehnquist on Capital Punishment" *Ohio Northern University Law Review* 17 (Fall 1991): 729-769.

Joe Anderson, "The Sixteenth Chief Justice" *Oklahoma City University Law Review* 12 (Fall 1987): 733-760.

John Denvir, "Justice Brennan, Justice Rehnquist and Free Speech" *Northwestern Law Review* 80 (April 1986): 285-320.

John Jenkins, "The Partisan: A Talk with Justice Rehnquist" *New York Times Magazine* (March 3, 1985): 28.

Alfred Levitt, "Taking a New Direction: the Rehnquist-Scalia Approach to Regulatory Takings" *Temple Law Review* 66 (Spring 1993): 197-222.

David Stewart, "Reconsidering Rehnquist" *ABA Journal* 74 (April 1, 1988): 40-45.

Nancy Maveety, "The Populist of the Adversary Society: The Jurisprudence of Justice Rehnquist" *Journal of Contemporary Law* 13 (1987): 221-247.

Mark Rahdert, "William Rehnquist's Judicial Craft: A Case Study" *Temple Law Quarterly* (Winter 1987): 841-880.

David Savage, "Opinions on Rehnquist: Views on the Chief Justice's Impact Are Still Mixed" *ABA Journal* 82 (October 1996): 82.

David Stewart, "What's Ahead with Rehnquist and Scalia?" *American Bar Association Journal* 72 (August 1986): 36.

David Stewart, "Nino and the Chief" *American Bar Association Journal* 73 (June 1, 1987): 42.

## **b. Justice John Paul Stevens**

Robert Sickels, *John Paul Stevens and the Constitution: The Search for Balance*, 1988.

*Rutgers Law Journal*, "Symposium on Justice John Paul Stevens" 27 (Spring 1996): 521-661.

Andrea Neal, "Justice John Paul Stevens" in *8 Men and a Lady*, 1990.

Arthur S. Miller, "Stevens: Lawyer's Lawyer Poised for Leadership" *National Law Journal* 2 (February 18, 1980): 20.

Richard Carelli, "Supreme Court Retirements, Seniority Place Stevens in Position to Become Power Player" *Chicago Daily Law Bulletin* 141 (May 26, 1995): 1.

Bradley C. Canon, "Justice John Paul Stevens: The Lone Ranger in a Black Robe" in *The Burger Court: Political and Judicial Profiles*, chapter 12.

Diane Hughes, "Justice Stevens Method of Statutory Interpretation: A Well-Tailored Means for Facilitating Environmental Regulation" *Harvard Environmental Law Review* 19 (Summer 1995): 493-552.

Paula Arledge, "Justice Stevens and Freedom of Expression, 1975-1985" Midwest Political Science Association Paper, 1986.

Stuart Taylor, "The Last Moderate" *American Lawyer* 12 (June 1990): 48.

Robert Riggs and L. Cordell McCarrey, "Justice Stevens and the Law of Antitrust" *University of Pittsburgh Law Review* 43 (Spring 1982): 649-702.

William Popkin, "A Common Law Lawyer on the Supreme Court: The Opinions of Justice Stevens" *Duke Law Journal* (November 1989): 1087-1161.

John P. Wagner, "Justice Stevens and the Emerging Law of Sex Discrimination" *Pepperdine Law Review* 8 (January 1982): 315-428.

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**B. Specific Litigants:** In addition to the sources cited above in the Constitutional and Statutory Doctrine section, litigants can use the following specialized studies that focus on how the various groups operate in the judicial realm. The preceding studies of the policy areas can also be used to explain the current state of the law and suggest where interest groups might carry their litigation strategies.

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Harry Krause, *Family Law in a Nutshell*, third edition, 1995.

**V. Other Resources:** The following resources may prove invaluable for occasional reference.

LEXIS/NEXIS: contains over 10,000 sets of sources. This should prove to be the most useful sources for all aspects of the course. Among the most important items, LEXIS/NEXIS has many law reviews and legal periodicals, lower court decisions (federal and state), state supreme court decisions, pending cases, regulations, administrative agency decisions, newspapers, magazines, Congressional hearings, legislation, Department of Justice reports, the Supreme Court Reports, the text of briefs presented to the Supreme Court and *amici* briefs.

*United States Reports*. The official transcript of the Supreme Court decisions.

*Supreme Court Reporter*. West Publishers version of the *United States Reports*. They are "keyed" to give a brief synopsis of the important issues in the case.

*Briefs Filed in the Supreme Court*. The litigants briefs and *amici* briefs are compiled for most of the important cases facing the Supreme Court.

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