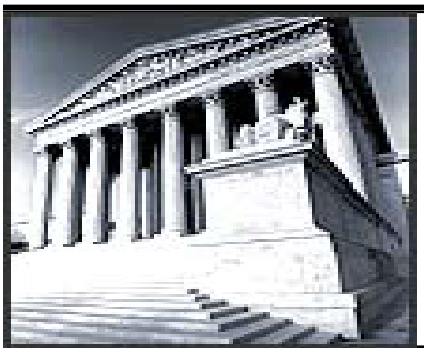

LAW AND COURTS

NEWSLETTER OF THE LAW AND COURTS SECTION OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

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FROM THE SECTION CHAIR

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I have good news to report concerning the Section Teaching Award. The American Bar Association Division for Public Education has agreed to support the Law and Courts Teaching Award. The first award will be given in 2002. The Division has made a commitment to provide a $250 cash award each year through 2006 and anticipates this will become a continuing award. Since this is an award determined by the Section with the ABA playing no part in the selection of the winners, the Division would prefer that we call the award the Law and Courts Teaching Award and note that the award is supported by a contribution from the ABA Division for Public Education.

The Teaching and Mentoring Committee, chaired by Barbara Perry aided by members John Brigham and Roger Hartley, will prepare the wording and criteria for the award subject to final approval by the Executive Committee. Next year's Teaching and Mentoring Committee will have the responsibility for selecting the first recipient. On behalf of the Section, I would like to extend our appreciation to this year's Committee for its work.

Our Section has been able to thrive because of the participation and hard work of numerous individuals. The members of this year's Executive Committee played an important part in the affairs of the Section and I have greatly valued and profited from their wise counsel. Howard Gillman's ongoing role as moderator of the Section newsgroup as well as Cornell Clayton's continuing editorship of the newsletter must be acknowledged as should Lee Epstein's maintaining supervision of the Section website. The Section is mightily indebted to Richard Brisbin who is about to start his third and final year as Editor of the Law and Politics Book Review. The Search Committee for a new Editor, chaired by Mark Graber with Sally Kenney and Dick Brisbin as members, should be making a recommendation soon to the Executive Committee.

This year's APSA Program Division Chairs, Paul Wahlbeck (Law and Courts panels) and Nancy Maveety (Constitutional Law and Jurisprudence panels) deserve our profound thanks for their putting together the Section's 2001 convention program. By working together, co-

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General Information

Law and Courts publishes articles, notes, news items, announcements, commentaries, and features of interest to members of the Law and Courts Section of the APSA. **Law and Courts** is published three times a year in Winter, Spring, and Summer. Deadlines for submission of materials are: November 1 (Winter), March 1 (Spring), and July 1 (Summer). Contributions to **Law and Courts** should be sent to:

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Instructions to Contributors

Articles, Notes, and Commentary

We will be glad to consider brief articles and notes concerning matters of interest to readers of **Law and Courts.** Research findings, teaching innovations, or commentary on developments in the field are encouraged.

Footnote and reference style should follow that of the *American Political Science Review.* Please submit two copies of the manuscript; enclose a diskette containing the contents of the submission; provide a description of the disk's format (for example, DOS, MAC) and of the word processing package used (for example, WORD, Wordperfect). For manuscripts submitted via electronic mail, please use ASCII or Rich Text Format (RTF).

Symposia

Collections of related articles or notes are especially welcome. Please contact the Editor if you have ideas for symposia or if you are interested in editing a collection of common articles. Symposia submissions should follow the guidelines for other manuscripts.

Announcements

Announcements and section news will be included in **Law and Courts**, as well as information regarding upcoming conferences. Organizers of panels are encouraged to inform the Editor so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards will be announced when posible. Finally, authors should notify *Helena Silverstein* at silversh@mail.lafayette.edu, of publication of manuscripts.

sponsoring panels, and extending opportunities to many colleagues to participate, they have helped to nurture the diverse intellectual life of our Section. It is always a struggle to be able to accommodate numerous proposals and requests within relatively few panels (panels are allocated to each Section/Division based on attendance at the previous year's panels thus those who are concerned about the number of panels allocated to us this year should note that attendance at panels most assuredly "counts"). Paul and Nancy were able to make the most of the allocations. We wish next year's Division Chairs Susan Haire (Law and Courts) and Rogers Smith (Constitutional Law and Jurisprudence) all the best in their joint endeavors to fashion a program that will reflect the rich diversity of our Section.

We are also indebted to Neal Tate and the colleagues who put together and participated in the short course on comparative judicial systems and politics. Offering short courses is a wonderful service for our membership and others. We have established a tradition of offering such courses that I expect will continue in the future.

Aside from the committees already mentioned and acknowledged, I would like to thank Malcolm Feeley and the members of the Exploratory Committee on Relations with the Law and Society Association for their contribution. By the time you read this, I anticipate that we will have the committee's report.

The Nominating Committee and the Section award committees play a vital role in the life of the Section. Many thanks to Mary Volcansek for chairing the Nominating Committee as well as to the members of her committee for their efforts. I would also like to thank the chairs and members of the six award committees: Jim Foster, Christine Harrington, Susan Lawrence, Sandy Levinson, Michael McCann, and Marie Provine. The membership of these committees reflect the diversity of our Section, and, in terms of gender diversity two of the six committees had a majority of women on them and the remaining four a minority. I mention this specifically because with only one exception, all the honorees (award winners and honorable mentions) this year are men.

My first reaction when contemplating these results was how could this have happened? With women constituting close to half the membership of the awards committees and men on those committees having records of commitment to gender equality, I was at a loss to explain this result. Each award committee, operating independently, of course exercised their best collective professional judgment and selected the award winner from those nominated. Were there too few women nominated? Was the result simply reflective of the fact that women constitute slightly under 22 percent of our Section (191 out of 884 members), and are at a statistical disadvantage (although women have been award winners in previous years)? The underlying question we ought to be thinking about is whether or not the lack of gender diversity reflected in this year's roster of award winners suggests that there are obstacles facing women doing law and courts research that need addressing.

One final note and that is one of congratulations to Lee Epstein who has been elected President-Elect of the Midwest Political Science Association.

My thanks to all who have contributed to the success of our Section.

SYMPOSIUM
THE COURT OF APPEALS: WHAT SHOULD BE STUDIED?
AN INTRODUCTION

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Several years ago —perhaps as long as a half-dozen years ago– one could not even have imagined having a political science panel about the U.S. courts of appeals which was based on the premise that, as we have now begun to develop a corpus of material, we should begin to look at where we needed to fill in the gaps, however wide they might be. If one had then asked, "What should be studied?" one would likely have received the answer, "Just about everything." The courts of appeals were mentioned in judicial process textbooks and the selection of their judges received attention in broader treatments of judicial selection, but little attention was focused on the courts themselves, their internal workings, and their relations with other institutions. The exceptions were not many. Goldman's initial article on voting patterns in the U.S. courts of appeals had appeared in the mid-1960s (Goldman 1966), and as early as 1970, we had seen the publication of Schick's (1970) intensive examination of the Second Circuit during Judge Learned Hand's chief judgeship and the small volume by Richardson and Vines (1970) on the Third, (old) Fifth, and Eighth Circuits. Howard's magisterial volume on the Second, (old) Fifth, and District of Columbia Circuits did not appear until a decade later (Howard 1981), but it did not immediately produce a significant increase in the amount of published work on the subject, although occasional articles on aspects of the courts of appeals continued to appear.

More than a year after the turn of the century, the picture is different. One can say that there is now at least a "small hardy band" of political scientists -indeed, more than just a small band— studying the U.S. courts of appeals and regularly writing about them. Donald Songer, whose contributions (which quite properly dominate the list of References at the end of this symposium) began in the early 1980s, and his students, and now *their* students, are at the core of this enterprise, although it is certainly not limited to them. A major change, perhaps *the* major change, has been Songer's development of a Court of Appeals Database. Along with other databases with which it can be linked, it has greatly facilitated certain types of research on these courts. Not only have we seen the first book-length study to come from use of the Database (Songer, Sheehan, and Haire, 2000), but papers drawing on it are now a staple item at our meetings. Indeed, the increase in the number of such papers and those drawing on other sources means that virtually every major political science meeting has at least one panel devoted specifically to research on the U.S. courts of appeals. We can also expect a further increase in the amount of published work on the courts of appeals in the near term, as these "meetings papers" and other work in progress, now "in the pipeline," begin to see the light of day. Work on the courts of appeals has really been picking up steam.

With the amount of work on the U.S. courts of appeals beginning to "take off," it is time to pause for a moment and look ahead. To do that and to attempt to identify aspects of the subject to which those toiling in the vineyard think attention should be given, as well as to examine concerns that should be addressed as we plow onward, a roundtable was organized for this year's Midwest Political Science Association meetings (April 2001). Each participant focused on a different aspect of the study of the U.S. court of appeals that the person identified as important.

Four participants from that session prepared articles for publication here based on their remarks. The first article, by Sara Benesh, focuses on the hierarchical relations between Supreme Court and the courts of appeals and on the courts of appeals' use of unpublished dispositions. Mark Hurwitz focuses on the need for longitudinal studies of the courts of appeals, particularly in relation to court agendas. Stefanie Lindquist then draws our attention to variations in the procedures and practices in these courts. Then to round out this symposium, Malia Reddick bats clean-up to examine strategic considerations in the decision making of these courts, including the possibility that the court will rehear a case en banc.

These four articles should help create an agenda for readers of this Newsletter who are looking for research topics and wish to join in work in a new and exciting area. I add only a few comments to my colleagues' broad and thorough treatment. The first is that the subjects on which they have focused certainly do not exhaust the range of topics on which research is needed. Here I note only two others, the courts' en banc actions and a further aspect of their hierarchical relations. As to the courts of appeals' en banc sittings, which Reddick mentions as a strategic consideration in judges' decision-making, we need to add to George's

important contributions (George 1998, 1999) to examine further the activity leading up to en banc sittings, judges' voting within them, and their outcomes. In discussing the relationship between the Supreme Court and the courts of appeals to which Benesh draws our attention, we also need to learn about the relationship between the courts of appeals and the district courts. That relationship is important because the district court creates the record the court of appeals reviews, and is particularly important in those situations when the court of appeals reverses the district court and is itself in turn reversed by the Supreme Court, thus upholding the district court's position.

My other comment relates to the question, "How many circuits should one study?" The first, easy answer might be "all of them," combining data across circuits. However, the procedural differences to which Lindquist has drawn attention should make us pause, as those differences raise concerns about whether we can conduct cross-circuit comparisons when the courts' practices, for example, as to sitting en banc or the rate at which they publish decisions, differ. The best answer may be that we should pursue a mix of studies in which some draw on data from all the circuits, others focus on a limited set of circuits just as Richardson and Vines (1970) and Howard (1981) did, and still others are intensive analyses of individual circuits or aspects of them, as can be seen in the study of the division of the "old Fifth" (Barrow and Walker, 1988) and the collection of articles about the Ninth Circuit edited by Hellman (1990), perhaps using papers from the courts where those are available.

NOTE
Those whose work appears here have benefitted from the additional comments made at the roundtable by Tracey George of the University of Missouri School of Law (soon to be at Northwestern University Law School), and the comments of Reggie Sheehan, Michigan State University, who was unable to take part. The author of this introduction thanks his colleagues for their observations about his remarks as well as their cooperation in getting this collection ready for publication.

Please note the use of a "master" list of references at the symposium's conclusion.

THE HIERARCHY OF JUSTICE AND NONPUBLICATION*

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Our understanding of the U.S. Courts of Appeals has grown in leaps and bounds since Howard's influential book (Howard 1981). However, in order to fully understand these courts, I think the most fruitful start is to clearly understand the influence of the United States Supreme Court on them. I discuss here extant theories of judicial behavior and how they apply to and increase our understanding of the courts of appeals, ending with a call to action for scholars to dig more deeply into the relationship between the Supreme Court and the courts of appeals. As a related aside, I also discuss the advantages and pitfalls in using only published decisions in our analyses and our general lack of understanding of the effects of doing so. The possibilities for future research appear to be endless.

Models of Judicial Decision Making

When thinking about decision making on the U.S. Courts of Appeals, we have several theoretical tools at our disposal. Certainly we benefit from the work of Segal and Spaeth and others in delineating the attitudinal model (1993). It seems likely that attitudes at least partially influence court of appeals decision making. However, it also seems likely, as Segal and Spaeth point out, that these lower federal courts are different and that their decision making is not so simple as that found at the United States Supreme Court. The Supreme Court can control its docket; it is beholden to no one; and it cannot be reversed by a superior court. Because the position of a courts of appeals judge is different, there is an indication that decision making on that bench will not be so straight forward. We move, therefore, to the theoretical tool of new institutionalism in attempts to explain this seemingly more complex court.

New institutionalism has helped judicial scholars to understand that, while attitudes matter, there is more to judicial decision making than merely implementing preferred policies. This is especially true at levels other than the U.S. Supreme Court, although institutions do affect even that body (Clayton and Gillman 1999). We are told that selection systems matter

(Brace and Hall 1997), that docket control matters (Brace and Hall 1990), and that informal norms matter (Brace and Hall 1990). While not all these apply to the courts of appeals, we certainly might delineate some institutional features that may impinge on the extent to which these courts can enact their preferred policy prescriptions. For example, the courts of appeals must hear every case brought to them, and their limited docket control may affect their latitude for policy making. In addition, these courts are in an intermediate position which forces them to consider other actors, namely, their superior, the Supreme Court, and their inferiors, the U.S. District Courts. They may take Supreme Court ideology (manifested in the ideological bent of its decisions) and precedent into account while also caring about the implementation that the inferior district courts will give their decisions. Within their own courts, they may also consider the possibility of en banc review.

That courts of appeals usually sit in rotating panels of three may also affect their decision making. Instead of having a collegial, unchanging body like the Supreme Court, these judges must constantly adjust their expectations to account for the differential makeup of their current panel in any given case. Their predictive and strategic difficulties are exacerbated by the fact that sometimes the judges on the panels are not even judges from their circuit, or circuit judges at all.

Talk of strategic capabilities brings us another theoretical tool – the strategic model. This model has been variously espoused, mostly with reference to the U.S. Supreme Court (see, e.g, Epstein and Knight 1998, and Maltzman, Spriggs, and Wahlbeck 2001). However, it is not controversial to submit that the courts of appeals judges may also behave strategically in some instances (Van Winkle 1996). They possibly behave strategically in opinion writing and the presiding judge may behave strategically in opinion assignments. We would imagine also that they behave strategically with respect to the Supreme Court, which brings us to our final theoretical tool: principal-agent theory.

Principal-agent theory was introduced by Songer, Segal and Cameron (1994) to explain the relationship between the courts of appeals and the Supreme Court. In their influential paper, they argued that courts of appeals are able both to follow Supreme Court precedent and to remain true to their own policy preferences. However, no work has been published since then that squarely deals with the questions which arise from this sort of principal-agent formulation. The largest question that continues to loom is, "Why do the courts of appeals comply with Supreme Court precedent when there are seemingly few good reasons to do so?" Many have argued that while the courts of appeals are formally beholden to the Supreme Court, in practice, the existence of the Supreme Court is not a real threat to the lower court judge. Indeed, the justices hear less than one half of one percent of all cases heard in the U.S. each year and reverses fewer than that.

This lack of Supreme Court review makes it difficult to understand the motivation of these judges. By all indications, they should not comply with Supreme Court precedent (Benesh 2000). Perhaps we need to turn to sociology and examine role theory more carefully to begin to comprehend why a lower court judge, rarely reviewed much less overturned by the highest court in the land, would nonetheless continue faithfully to implement its policy prescriptions. Such behavior simply does not seem rational until we bring to bear some sort of role perception for the judges to behave this way. What we are left with is a lower court which should never comply but nonetheless does so, and a Supreme Court which does little to induce compliance but which nonetheless receives it. This seems to me to be the biggest puzzle facing courts of appeals scholars today and something for which some creative thinking is needed if we are to solve it.

We might begin thinking about this puzzle by discussing the utility functions of courts of appeals judges and what composes such functions. In other words, what do judges value and what are they trying to maximize? There has been some work done in this area on which we might draw to begin to conceptualize this issue (Posner 1993, for example). Potential components of circuit judge utility functions may include the following: policy preference, workload, reputation, leisure, legal preference, independence, and good relations with colleagues. Seemingly one could derive a utility function that weights certain values to induce Supreme Court compliance. For example, the judges may very highly value "getting it right," striving most valiantly to make the decision their colleagues will see as legally sound and correct. If that were the case, perhaps they would more likely comply with Supreme Court precedent, particularly if they think its decisions would be more likely to be legally sound. A high value on legal socialization may also induce compliance, because a judge who deems his role as a circuit court judge to be one of subservience to the Supreme Court would likely not stray far from its jurisprudence. Searching out the composition of judicial utility functions seems to be our next step in fully understanding the relationship between the Supreme Court and the courts of appeals, which I argue is essential to understanding circuit court decision making.

Although I have focused on what the lower court judges may do, we must also recognize the possibility that there is real monitoring taking place at the Supreme Court level – behavior that we are incorrectly not categorizing as such. Indeed, we know very little about the cases that the Supreme Court declines to review. Might it not be the case that the Court is taking a representative sample of the cases being appealed to it each year, in effect deciding cases in all issues

under litigation in the courts of appeals, thereby providing guidance and monitoring to all circuits deciding a similar case? An analysis of the Supreme Court's rejected cases would allow us to capture fully the extent to which the Supreme Court is actually monitoring court of appeals decisions and allow us more fully to understand its role in courts of appeals decision making.

Also relevant to the analysis of the Supreme Court – circuit court relationship is the failure of the courts of appeals to publish all of their decisions. Most work on the U.S. Court of Appeals assumes implicitly that only published cases are necessary for inclusion in studies of decision making. That assumption, however, is quite tenuous and scholars have begun to note problems deriving from such an assumption. In fact, overall the U.S. Courts of Appeals report less than one-third of their decisions. It is not at all certain that if one is interested in the relationship between the U.S. Supreme Court and the courts of appeals, it is unnecessary to worry about the exclusion of the unpublished cases. Indeed, examining them is important as one might, for example, miss outright defiance of the Supreme Court buried in an unpublished case. If nothing else, it is an empirical question to be answered.

Perhaps unpublished cases are less "important," less "difficult," and less "controversial." In order to test this hypothesis, one could choose an area of the law, find both published and unpublished decisions, at least for those circuits that allow LEXIS or WESTLAW to report them, and trace their treatment by the Supreme Court. While many circuits do not allow citation of these cases, judges do sometimes cite them in their opinions. If it turns out that either many unpublished decisions are cited by the judges themselves, produce dissents by members of the court of appeals panel hearing them, or are reviewed by the Supreme Court, the assumption that these are unimportant cases will have been found to be invalid. If, on the other hand, these are the easy cases and are almost without exception unanimous, and if certiorari is seldom sought by parties to them, their exclusion has no bite, especially when dealing with research questions about legally binding precedents or policy pronouncements.

The question of the role of unpublished cases is extremely timely given Judge Arnold's recent opinion in the Eighth Circuit in *Anastasoff* v. *United States* (2000 U.S. App. LEXIS 32055) that rules treating unpublished cases as nonprecedential are unconstitutional expansions of judicial power. Although Judge Arnold's opinion was vacated, were this rule to dominate, we would have little justification for continuing to ignore such cases. If, on the other hand, other circuits and the Supreme Court were to disagree with Judge Arnold's position, it would provide further justification for the exclusion of unpublished cases for, if they are nonprecedential, they can arguably be excluded from decision-making analyses. Either way, we need to know more about these cases and need to make the decision over their inclusion or exclusion in a more informed manner.

As this symposium suggests, there are many methodological as well as substantive puzzles one must solve before adequately modeling and understanding decision making on the U.S. Courts of Appeals. Hopefully, to make efforts in that direction will seem an exciting challenge that will incite further research rather than an overwhelmingly arduous and hopeless task depressing production of good work on the subject.

* This essay was prepared for presentation at the Annual Meeting of the Midwest Political Science Association, April 19 – 21, 2001, Chicago, IL. The author thanks Steve Wasby, Susan Haire, Stefanie Lindquist, Nancy Crowe, and the conlawprof listserv for discussions and information that influenced my thinking on these matters.

CROSS-TIME ANALYSIS OF THE US COURT OF APPEALS: A FRUITFUL RESEARCH AGENDA

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"There is a critical need for good longitudinal studies [of the U.S. courts of appeals] over significant time periods" (Songer 1991, 55). Scholars of judicial politics, whether studying the courts of appeals or other courts, have been somewhat reticent to incorporate cross-time analyses into their studies. Indeed, Tate and Haynie (1993; 1994) acknowledged this lack of emphasis on longitudinal studies while they defended the use of time series in their study of the Philippines Supreme Court. While some scholars have begun to incorporate time series into their research on the Supreme Court (*see, e.g.*, Haynie 1992; Mishler and Sheehan 1993; Norpoth and Segal 1994; Caldeira and Zorn 1998), students of the courts of appeals generally have not followed suit. Consequently, Songer's (1991) counsel remains as pertinent today as when he wrote it a decade ago.

Why have longitudinal studies of the courts of appeals been so infrequent? The most basic answer is that data limitations have made it nearly impossible for judicial scholars to carry out cross-time analyses. It was not until the release of the Supreme Court Database, compiled by Spaeth, that longitudinal studies of the Supreme Court became practicable. Analogously, the recent availability of the Courts of Appeals Database, developed by Songer, signifies that these data limitations no longer should be an impediment to judicial scholars wishing to incorporate analyses of the courts of appeals across time. Because the design of the Courts of Appeals Database is longitudinal in nature, covering over seventy years, myriad cross-time analyses are now possible which would not have been feasible even just a few years ago. *

The attributes of the Courts of Appeals Database are succinctly described by Songer, Sheehan, and Haire (2000), who discussed many different issues and possibilities for avenues of study, doing so by providing numerous longitudinal examples of the dynamics of the courts of appeals. Their study merely scratched the surface, however, because with few exceptions they offered only descriptive analyses of the courts of appeals. While theirs was an important first step, studies of these courts across time that are systematic in nature remain to be carried out.

Two areas of interest to judicial scholars demonstrate the potential for systematic, longitudinal studies of the courts of appeals utilizing the Courts of Appeals Database: agendas and decision making. With respect to judicial agendas, while we have learned quite a bit about the docket of the Supreme Court (*see, e.g.* Pacelle 1991; Perry 1991; Caldeira, Wright, and Zorn 1999), comparable studies on the agenda of the courts of appeals are few in number. Since these intermediate courts have become courts of last resort (Howard 1981), it is critical that we understand the systematic influences on, and trends in, the agenda before them.

The jurisdiction of the courts of appeals being essentially mandatory, the agenda in these courts reflects the kinds of cases which litigants deem important enough to appeal. This is distinguished from the Supreme Court, which uses its discretionary jurisdiction to set its agenda according to the justices' priorities. As reported by Howard (1981) and updated by Songer, Sheehan, and Haire (2000), the agenda priorities of litigants before the courts of appeals have changed dramatically over time (*see also* Baum, Goldman, and Sarat 1981-82; Songer and Davis 1988-89). Private economic cases, which once made up the bread and butter of litigation before these courts, have dwindled in relative importance over the years; in their place, civil rights and liberties cases have become more prominent. As well, a greater proportion of the agenda today consists of criminal cases than occurred in prior eras, although the rate of these cases has risen and fallen over time. Kaheny (1999), who also reported on agenda trends in the courts of appeals, utilized the Courts of Appeals Database to confirm and expand upon these findings.

What influences caused these changes in the agenda priorities of litigants before the courts of appeals? Songer, Sheehan, and Haire (2000) suggested that shifts in the social, political, and legal environments are related to agenda transformation over time, but because their analysis was descriptive they necessarily made no systematic conclusions in this regard. Similarly, Howard (1981) and Kaheny (1999) each illustrated some of these changes, but neither framed or tested any theoretical deductions regarding these transitions in agenda. Employing Phase I of the Courts of Appeals Database in my dissertation, I found that agenda changes across time were dependent upon the issue being appealed, the dynamics of Supreme Court decision making (including the issuance of landmark decisions), and recent agenda changes in the courts of appeals (Hurwitz 1998). There have been a few systematic

studies of appellants' calculus to appeal a decision (*see, e.g.*, Songer, Cameron, and Segal 1995; Harrington and Ward 1995), but the changing nature of parties before the courts of appeals does not provide sufficient answers concerning the systematic influences on their agenda priorities. This summary should make clear that systematic, longitudinal studies of agenda priorities in the courts of appeals represent a fruitful avenue of potential research by judicial scholars.

Songer's (1991) concern that longitudinal studies in the courts of appeals are necessary likewise applies to research on the influences on decision making. For instance, Songer, Sheehan, and Haire (2000) suggested that the partisan patterns of voting behavior which many prior studies have found, including those which stem from the origins of judicial behavioral research on the courts of appeals (Goldman 1966; Songer 1982), seem to be a phenomenon of the post-World War II era. That is, ideological differences in voting behavior in the courts of appeals may not apply universally across time. Similarly, while examining rates of dissensus, including reversal of lower court decisions and dissent from majority opinions which evince discretion in judicial policy making, Songer, Sheehan, and Haire (2000) found that reversals were relatively stable but that dissents were increasingly dynamic over time. Beyond speculation, we do not know the influences on these long-term trends in decision making in the courts of appeals. Studies utilizing sophisticated time-series methods would be particularly useful to tease out the systematic explanations for these dynamics of decision making.

The Courts of Appeals Database is invaluable in providing data for studying the courts of appeals across time. Notwithstanding, as with any source of data, there are limitations inherent in this Database. For instance, the Courts of Appeals Database consists of a sample of a certain number of published cases per circuit per year over the time period. Since the universe of cases is not available, there is the potential for sampling bias with any study utilizing this Database. Nevertheless, so long as the researcher takes some precautions, potential for bias can be limited. Because of inter-circuit differences in work product, a weighting variable among the circuits (provided in the Database documentation) must be employed in nearly any analysis. Moreover, because the data are drawn only from a sample of published decisions, researchers should be careful about making some generalizations about their findings. Even so, lack of publication seems to be a pattern applicable to the past thirty or so years (Songer 1990), and cases which concern judicial policy making are much more likely to be published (Songer, Sheehan, and Haire 2000). Accordingly, the scheme of the Courts of Appeals Database is not as inherently limiting as it might otherwise seem at first blush, if the researcher carefully constructs the research design and conclusions of a particular study.

There also are potential concerns with respect to the manner in which data from the Courts of Appeals Database are employed. There are, for instance, issues of operationalization, because resulting variables will be very different depending upon the manner of measurement. For instance, when utilizing decisional trends over time, whether as a dependent or independent variable, should all cases from the Courts of Appeals Database be used, or only those in which overt dissensus was apparent? Goldman (1966) argued that only nonconsensual decisions and unanimous reversals should be incorporated in a research decision on voting behavior in the courts of appeals, while Songer (1982) demonstrated that some seemingly consensual decisions veiled the ideological predispositions of judges and therefore could be utilized. Because the answer depends, at least in part, upon the design and purpose of a particular study, researchers need to be cognizant of coding and other decision rules when utilizing the Courts of Appeals Database.

Despite its limitations, the fact is that the Courts of Appeals Database provides a wealth of data and information for researchers interested in studying these courts. In fact, in order to analyze the nature of the courts of appeals from a longitudinal perspective, a subject which remains open for a wide variety of potential research agendas, the Courts of Appeals Database constructed by Songer is undeniably essential.

*Phase I of the Courts of Appeals Database, which includes data from 1925-1988, is available from ICPSR (http://www.icpsr.umich.edu/). Phase II, which broadens the years of study from 1925-1996, is available from web page of The Program for Law and Judicial Politics at Michigan State University (http://www.ssc.msu.edu/~pls/pljp/).

CROSS-CIRCUIT VARIATIONS IN NORMS AND PRACTICES

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Since the 1960s, political scientists have contributed solid theoretical and empirical foundations for the future study of the United States Courts of Appeals. Innovative work by scholars like Howard, Goldman, and Songer has inspired others to conduct studies exploring attitudinal, legal and strategic dimensions associated with circuit judges' voting patterns. Furthermore, researchers are now pursuing studies regarding the institutional dynamics that constrain circuit judges' behavior, including the manner in which the judicial system's hierarchical structure affects case outcomes (Songer, Segal and Cameron 1994; Klein and Hume 2000).

For all this burgeoning research, political scientists still know little about the circuit courts as *singular judicial institutions*, particularly with respect to decision making norms and practices specific to the circuits. Political scientists' frequent focus on judicial voting behavior has contributed to this shortfall. With the exception of controls for regional influences (Haire 1993), researchers have typically aggregated votes from all circuits and ignored circuit-level differences. Yet neo-institutional theory rightly cautions that political behavior is conditioned by institutional context, and studies of judicial voting behavior have amply supported this proposition. Thus, for purposes of understanding political behavior within the circuit courts, we must self-consciously reevaluate our assumptions concerning institutional similarities and differences across the circuits.

Close examination reveals that for many purposes the second tier of the federal judicial system should not be viewed as a monolith. To be sure, the circuits do share some fundamental institutional features: all hear appeals as of right, are staffed by Article III judges, follow the same Federal Rules of Appellate Procedure, and enforce the same federal laws and constitution. But the decentralized structure of the federal judicial system has allowed the circuits to develop their own individualized, adaptive methods for case disposition. As a result, the courts of appeals differ on a number of institutional dimensions. Among these differences are workload, docket composition, oral argument, opinion publication, and case screening practices.

First, judges on different courts of appeals sometimes face dramatically different workload constraints. In recent years, the output per judge (as measured by merits terminations) on the Fifth and Eleventh Circuits has been approximately twice as great as that for judges on the D.C., First or Tenth Circuits. Since arriving at decisions in some case types is more time-consuming than in others (Posner 1996), these workload differences may be exacerbated or mitigated by variations in the courts' agendas. As a percentage of its overall docket, the Ninth Circuit hears more appeals from the Immigration and Naturalization Service, the Second Circuit more securities cases, and the Fifth Circuit more admiralty cases. Of course, given its unique status as the federal administrative law court, the D.C. Circuit's agenda is most easily distinguished from agendas in the other circuits.

Furthermore, individual circuits have instituted techniques to control their rapidly increasing caseloads. "Differentiated case management" techniques enable judges to cope with their mandatory dockets by screening cases and channeling them onto alternative decision-making tracks. Such differentiated case management practices include using staff to screen cases for full or summary treatment, limiting oral argument, and reducing the number of published opinions. The effect of these screening processes is pronounced. In the Third, Fourth, Tenth, and Eleventh Circuits in 1997, oral argument took place in about thirty percent of cases decided on the merits, while the First and Second Circuits granted oral argument in more than sixty percent of such cases that year (McKenna, Hooper and Clark 2000). Opinion publication is similarly varied. In 1997, the First Circuit published 51 percent of its opinions in cases terminated on the merits, while the Fourth Circuit published only 11 percent. Sometimes there are variations by case type. In the 1980s, the Eighth Circuit adopted a unique policy of granting oral argument and issuing published opinions in most Social Security disability cases, while other circuits rarely grant oral argument or publish opinions in these routine matters (see Merritt and Brudney 2001).

In addition to these institutional variations related to case processing, the circuits may also vary substantially in other decision making norms. Opinion assignment practices, which may not be uniform, provide an example of such variation. While political scientists have studied the Supreme Court's opinion assignment process in considerable detail, we know

relatively little about such assignment practices in the courts of appeals. (For an exception to this observation, see Howard 1981, Ch. 8.) According to First Circuit Judge Frank Coffin, in some federal appellate courts, "cases are assigned, before argument, by rotation or lot" (1994, 168), although in most circuits, assignment is made by the presiding (senior) judge on the panel. Other factors affecting opinion assignment may also differ across the circuits, perhaps allowing for specialization, especially for judges with prestigious reputations (Klein and Morrisroe 1999). Freshmen may also be shielded from writing controversial opinions.

Norms related to en banc procedures and petitions for reconsideration also differ across the circuits. Judges on the Second Circuit work diligently to avoid en banc hearings by withdrawing panel opinions upon receiving a convincing petition for reconsideration; they then reconfigure the offending opinion to respond to colleagues' concerns (see Howard 1981, 217-18). Between 1987 and 1997, the Second Circuit averaged only one en banc hearing per year, while the Fourth and Ninth Circuits averaged 13 and 12 such proceedings per year respectively--differences that cannot be explained solely through reference to circuit size or caseload.

Leadership plays a likely role in the development of collegial norms. Although studies abound concerning the leadership qualities and influence of Chief Justices on the Supreme Court (e.g., Haynie 1992), we have few corresponding studies about the leadership of chief judges in the circuits. Yet chief judges exercise important administrative functions related to case processing and decisional practices that may influence circuit norms and outputs. And what of norms related to the circuits' individual supervisory role over its district courts? Some circuits appear significantly more willing than others to reverse their own district courts, with variations in reversal rates among the circuits sometimes exceeding nine percentage points depending on the year.

Finally, and perhaps most importantly, we are only just beginning to understand how the norm of stare decisis operates in the courts of appeals. As Congress grappled with the question whether to split the Ninth Circuit, inquiries were made concerning whether circuit size was negatively related to stable precedent. Only research by law professor Arthur Hellman, conducted in connection with the Federal Judicial Center, has directly addressed the relationship between the circuits' jurisprudential independence, stable precedent, and circuit size (Hellman 1999).

Existing evidence thus suggests that, even as they share other important characteristics, the courts of appeals often exhibit divergent institutional norms and practices. While this conclusion adds a level of complexity to our task in studying these courts, it also presents a valuable research opportunity. Consider the comparative research conducted on state supreme courts by Melinda Hall and Paul Brace. Like the circuit courts, the state supreme courts share only some of the same institutional characteristics. Using pooled cross-section time series designs and examining data from a sample of the states, Hall and Brace have shed light on the manner in which institutional factors, such as docket control and composition, opinion assignment procedures, and selection method affect appellate court decision making.

Similar comparative work could be conducted using data from the U.S. Court of Appeals. An example helps illustrate the point. Hall and Brace have shown that the presence of a discretionary docket created by an intermediate appeals court dramatically affects the nature of state supreme court justices' voting behavior. Similar studies could be conducted in the circuit courts, since by adopting differentiated case management techniques and thus diverting routine cases for expedited processing, some circuits have enhanced the discretionary nature of their dockets. Work by Hall and Brace has also demonstrated the important role in the structuring of judicial behavior played by the chief justice and by opinion assignment procedures (e.g., Brace and Hall 1990; Hall 1990, 1985).

The federal courts of appeals provide fertile ground to conduct comparative studies testing theories about the influence of institutional constraints on judicial behavior. However, before such studies can begin we need more systematic research on the degree and nature of institutional variation across the circuits. Such research will provide a solid foundation to address many vital questions about the courts of appeals, as well as about judicial institutions in general.

DECISION MAKING IN THE COURT OF APPEALS

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Public law scholars have demonstrated that decision making on the courts of appeals is a product of both legal and extra-legal factors. Several studies have demonstrated the importance of precedent in appeals court decisions in particular issue areas, whether in terms of the relevance of certain case characteristics (e.g., Gruhl 1980 (libel); Songer and Haire 1992 (obscenity); Songer, Segal, and Cameron 1994 (search and seizure)) or in responsiveness over time to significant shifts in Supreme Court decision making (e.g., Songer 1987 (economic regulation); Songer, Segal, and Cameron 1994 (search and seizure); Songer and Sheehan 1989 (involuntary confessions and libel)). And, since Goldman's (1966; 1975) pioneering work on the courts of appeals, numerous studies have confirmed that these judges take into account their own policy preferences (see, e.g., Howard 1981; Songer and Haire 1992; Songer, Segal, and Cameron 1994).

There is, however, only a small and eclectic body of research on the extent to which appeals court decisions reflect strategic considerations, which makes this is a fruitful avenue for research on the courts of appeals. The first step in determining whether appeals court judges are strategic actors is to identify their goals. In general, there are four goals that may motivate judges: adopting policies that are consistent with their own preferences, reaching "principled" decisions, attaining higher office, and ensuring institutional legitimacy. Epstein and Knight (1998) offer these as potential goals for Supreme Court justices, and they are applicable as well to judges of the courts of appeals. Appeals court judges may be ideologues, who seek to bring policy as close as possible to their own "ideal points." They may also strive to reach decisions that are based on impartial legal doctrines, either because of their legal training and socialization or because they are concerned about their reputations among their peers. In addition, they may aspire to a position on the Supreme Court and may thus attempt to curry political favor in their decisions. And finally, they may wish to protect the perceived authority of their future decisions by avoiding being overturned by the en banc court of appeals and reversed by the Supreme Court.

The few studies to date that assess the extent to which strategy is a factor in the decisions of the courts of appeals generally provide evidence that, in addition to individual ideology, the state of the law and the fear of en banc and Supreme Court reversal motivate decision making on these courts (George 1998; Songer, Humphries, and Sarver 2000; Van Winkle 1996). These studies employ a variety of measures of strategic considerations, which indicate the work that remains to be done.

Some strategic considerations, such as personal policy preferences, are readily operationalized. Common proxies for the policy preferences of appeals court judges include their own party affiliation (Goldman 1966, 1975; Richardson and Vines 1970), the party affiliation of the appointing president (Tate 1981; Carp and Rowland 1983; Tate and Handberg 1991), and various judicial background characteristics (developed into indices) (Songer, Segal, and Cameron 1994). While not perfect, these indicators are objective and replicable. Other considerations, such as the extent to which a judge is concerned about reaching principled decisions, or whether a judge views a seat on the Supreme Court as a realistic possibility, are more difficult to measure.

In addition to reaching decisions that comport with their own preferences, appeals court judges may also wish to adhere to generally accepted legal doctrines. The ideological direction of the decision below has been used to capture the importance of shared interpretations of the law (Songer, Humphries, and Sarver 2000), but this measure may represent nothing more than the tendency of the courts of appeals to affirm. Another study uses the presence or absence of case characteristics that are relevant in that area of the law (Van Winkle 1996). While instructive in particular issue areas that are well suited to fact pattern analysis, this is not readily applicable to a broad range of issues. A simplistic but perhaps appropriate measure of the importance to these judges of reaching principled decisions is the extent to which they rebut alternative interpretations of law or adverse precedents in their written opinions. Judges who are concerned about the state of the law may strive to distinguish competing theories, in spite of workload pressures that might encourage no more than a rudimentary explanation of the decision.

Another potential factor in the decisions of appeals court judges is career ambition. However, there are no studies that attempt to assess whether courts of appeals judges have higher ambitions that shape their decisions. Certainly, we would not expect this concern to figure in every decision, but for elevation-minded appeals court judges, it may be present

in high-profile cases such as the Microsoft case or cases involving issues that are of particular interest to the current presidential administration, such as those in which school vouchers are challenged.

Finally, lower court judges may wish to enhance the legitimacy of future decisions by avoiding reversal by other judges or courts. Most studies measure the likelihood of en banc and Supreme Court reversal according to the ideologies of active circuit judges and Supreme Court justices. These measures may gauge the likelihood of reversal upon review, but they do not account for the likelihood of review. One attempt to rectify this is a measure of "certworthiness" and an analogous measure which is applied to the likelihood of en banc review (Songer, Humphries, and Sarver 2000). However, before we can equate the Supreme Court's certiorari decision with a circuit's decision to grant en banc review, more work is required to understand the relevant considerations in circuit decisions to review the rulings of three-judge panels. Indeed, these considerations may vary across circuits and over time.

Important as are operationalizations of these factors related to strategy, a key question that has yet to be addressed is whether evidence of strategic constraints is present in all cases, or whether appeals court judges pursue different goals in different cases. To appreciate the importance of strategic considerations, we need to understand when they are operative. For example, are there issues so intrinsic to a judge's ideology that the judge votes personal policy preferences regardless of the likelihood of en banc or Supreme Court reversal? In high profile cases, does an ambitious judge rule in accordance with the views of the political majority? Are there cases for which judges perceive that en banc or Supreme Court reversal would be particularly detrimental to the legitimacy of their decisions, so that the positions of these courts are the key factor in decisions in these cases?

The primary source of data for testing hypotheses regarding the strategic considerations of appeals court judges is the Courts of Appeals Data Base, developed by Donald R. Songer. For the purposes of examining influences on decision making, the data base includes codes for the votes of panels and individual judges, including the outcome and ideological direction. The data base is available through the Inter-University Consortium for Political and Social Research (ICPSR) at the University of Michigan (www.icpsr.umich.edu) and the Program for Law and Judicial Politics (PLJP) at Michigan State University (www.ssc.msu.edu/~pls/pljp/).

Also quite useful is the Data Base on the Attributes of U.S. Appeals Court Judges, which contains background characteristics for judges of the courts of appeals; it can be used to develop measures of ideology for appeals court judges. This data set is also available through ICPSR or PLJP. To facilitate analyses such as those described here, as well as examinations of the relationship between the circuit courts and the Supreme Court, statistical codes have been developed by Ashlyn Kuersten; these codes allow researchers to merge and use data from the Courts of Appeals Data Base, the Attributes Data Base, Spaeth's Supreme Court Data Base, and others. The web site address is www.wmich.edu/~nsf-coa/.

By utilizing the wealth of data that is available and building upon the studies that have been conducted, scholars of the courts of appeals can address important and underexplored questions about the extent to which judges on these courts behave strategically.

**These statements do not necessarily reflect the views of the American Judicature Society.*

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A SHORT REPLY BY A BEHAVIORAL SCHOLAR TO HISTORICAL INSTITUTIONALISM

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The historical institutionalists (see, e.g., Clayton and Gilman 1999) present strong arguments against some of the research conducted by behavioral scholars. But some of this criticism does not touch topics in which there is an obvious disagreement between scholars in both camps. More specifically,

1. One can be a behavioral scholar and be critical of the attitudinal model. (See e.g. Sara C. Benesh, forthcoming)

2. One can be a behavioral scholar and reject many of the separation-of-powers models advanced by rational choice scholars. (See e.g. Segal 1997)

3. One can be a behavioral scholar and investigate decision making in the 18th and 19th centuries. (See e.g., Epstein, Segal and Spaeth (2001)). This may not be enough to call oneself "historical", but it is a start.

4. One can be a behavioral scholar and embrace Institutionalism (See, e.g., Epstein and Knight 1998; Maltzman, Spriggs, and Wahlbeck 2000). In fact, all behavioral scholars would be willing to test relevant institutional variables.

5. One can be a behavioral scholar and affirm that precedent influences the decision making on the Court. (See e.g., Kritzer, Pikerill and Richards 1998).

6. One can be a behavioral scholar and study decision making from the perspective of the justices, at least as indicated by their statements in their opinions and in their private papers. A behavioral scholar, however, would also compare these statements with their voting behavior.

7. One can be a behavioral scholar and attempt to explain the behavior of the Court as a whole, instead of the behavior of the individual justices. Note the extensive literature by behavioral scholars regarding why the Court grants cert.

8. Finally, one can be a behavioral scholar and explore the justices' motivation. The key question in the behavioral study of Supreme Court decision making is not, "How did the justices behave?" Rather, the key question is "Why did they behave the way they did?" Only the latter leads to theoretical knowledge.

9. But one cannot be a behavioral scholar and reject quantification.

Thus, the heart of the controversy between the historical institutionalists and the behavioral scholars does not concern the first eight items listed above. Rather, the heart of the controversy concerns the virtues and vices of quantification.

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A FRIENDLY REJOINDER FROM A HISTORICAL INSTITUTIONALIST TO A BEHAVIORALIST

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Thanks to Saul Brenner for clarifying some misleading impressions people might have about the scope of behavioralism. He is right to emphasize that behavioralism is not necessarily linked to the attitudinal model. I would add that historical-interpretivists are not necessarily hostile to the attitudinal model or to the investigation of strategic decision-making. Some of us are even willing to agree that justices sometimes do whatever they want without apparent regard for legal norms or institutional constraints.

Professor Brenner's piece also gives me a chance to clarify some misleading impressions that others may have about related issues.

For example (and I doubt Professor Brenner disagrees with this), the edited volume to which he refers (Clayton and Gillman 1999) is not a historical-institutionalist attack on behavioralism. Roughly half the scholars represented in the volume are mostly known for their wonderful work applying behavioralism or rational choice to the study of judicial politics. It is true that there are those of us who have a preference for historical-interpretive approaches. But (for most of us) this is simply a function of our training, temperament, and broader interests, rather than some fundamental disagreement with behavioralism.

Professor Brenner is right that there have been times when some historical-interpretive scholars have presented "arguments against some of the research conducted by behavioral scholars" as well as formal modelers. But the point was not so much to call into question the legitimacy of those approaches as it was to carve out a bit more room in the discipline for others to use historical-interpretive methods without guilt or penalty. Some of us try to make this happen by suggesting that historical-interpretivists are in a very good position to shed new light on some of the traditional concerns of public law scholars. At other times we have suggested that more positivist approaches rarely improve upon the knowledge generated by historical-interpretivists and often achieve whatever explanatory power they have by incorporating historical or interpretive analyses into ostensibly general models. We have also occasionally complained that the demands of quantification and formal modeling sometimes result in accounts that are downright misleading (if not demonstrably wrong), despite the thin veneer of scientific objectivity provided by behavioralist or rational-choice styles of presentation. Still, there are parallel complaints to be made about some historical-interpretivist work—you know, the traditional, laughable claims about how it is merely descriptive rather than truly explanatory, subjective rather than objective, idiosyncratic rather than general, and so on. This is the standard stuff of productive give-and-take in any discipline. None of these arguments should be taken seriously as an effort to get people to declare a particular approach to be inherently flawed.

My only minor disagreement with Professor Brenner is that I am not sure this all boils down to the virtues and vices of quantification. Quantification as such does not have virtues and vices; it has relative strengths and weaknesses in relationship to particular projects or research questions. The same is true with formal modeling and historical-interpretive accounts (not to mention other methods of social inquiry).

On this point I would not presume to speak for all historical-interpretivists. Some may insist (following Charles Taylor) that what distinguishes social inquiry from research in the natural sciences is that our subjects are not objects and thus we must incorporate into our explanations the local contexts and structures of meaning that are at the heart of all purposeful human behavior. I don't necessarily disagree with this, but my more pragmatist (Rortyan) version of the argument is that it is often useful to talk about people as if they are objects, just as it is also sometimes useful to talk about (oh) forests as if they are subjects (with their own needs, concerns, vulnerabilities).

Finally, on the issue of our attitudes about methodological diversity, I can report that every historical-interpretivist I know makes sure that graduate students are exposed to the best work being done by scholars in every camp. Many of us routinely recommend for publication work by behavioralists and rational choice scholars. Nothing would make me happier than if we could achieve symmetric reassurances from behavioralists and formal modelers.

REFLECTIONS ON "THE STAGNANT POOL"

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Hey, are you looking for something fun to read before the summer ends? Or wondering what you'll read on the airplane to the APSA meeting in San Francisco? Then get a copy of Nancy Maveety's first novel, *The Stagnant Pool: Scholars Below Sea Level*. * While the title may not be felicitous, Maveety's book is a marvelous send-up of academic life in the "Big Easy." Truth to tell, though, you really don't need a particular season or special occasion to read the book; it's a good read at any time. Maveety, an associate professor at Tulane University and one of us, a judicial scholar, has written a sly, satirical story about the foibles of the political science faculty, graduate students, and administrators at fictional Carondelet University in New Orleans. Carondelet teeters on the margin of academic respectability; its enthusiasm for scholarship replaced by a genteel lassitude, it has become "a refuge, a haven for those…content to rest on the laurels of one decent achievement."

Maveety's villain, of course, is a university administrator. The dean of the policy sciences school, which was imposed on an ill-advised shuffling of departments to encourage interdisciplinary relations, has decided to eliminate graduate student stipends to make up for his financial bungling and shenanigans. "Fat Pat's" cuts jeopardize what little remains of graduate education at Carondelet and they pit students against faculty members who can blunt the cuts only if they give up all or some of their merit raises. For Steve Frank, a tenured member of the political science department, the dean's actions also begin to unravel his romantic entanglement with Barb, a graduate student in philosophy pestered by doubts about her future, who wants Steve to do something about the situation so she can finish her degree…if indeed that is what she wants to do. In the end, the dean's financial records detailing his sins are exposed by the student newspaper, toppling Fat Pat (only to return him to the political science department!) and prompting Carondelet's president to push through yet another reorganization of departments that will likely be as ineffectual as the last one and do little to stem Carondelet's decline.

With these events animating her plot, Maveety peoples her story with a large cast of well sketched bit players drawn from both academe and the city. Latin Quarter drop-outs and hangers-on float in and out; ambitious graduate students curry favor with faculty, hoping to escape Carondelet before the ship sinks; other students caught up in the flow of events founder; faculty members try not too successfully to keep their heads above a rising tide of mediocrity as their colleagues behave at department meetings like their academic specialties (watch out for game theorists!); a bearded drag queen and a licentious widow with clout because her husband left a large sum of money to Carondelet keep up a catty, cutting commentary as the story unfolds. Steve and Barb are two of the three central figures. The third is Joel, a graduate student in cultural anthropology and wannabe jazzman agonizing over his post-modernist dissertation on hair and drag.

Maveety creates situations for these three characters that allow her to explore with empathy and wit relations between people of different rank and status, the insecurities, anxieties, and doubts of people at turning points in their lives, and the artificialities of professional identities. Barb, for example, despite her self-doubts is strong willed and capable. Still, as a graduate student she must grapple with the vulnerability and complication of being dependent on her advisor and other faculty (not just Steve). An affecting, uncomfortable but wryly presented incident between a tipsy Barb and a visiting philosopher who offers her…with obvious expectations… a summer sinecure where she would have access to the papers of the obscure ethicist who is the topic of her dissertation is one illustration of the kinds of situations Barb negotiates. Steve after being promoted to associate professor settles into life in the academic slow lane and begins to lower his professional expectations and self-image accordingly. Steve's sense of the widening gulf between him and his discipline is neatly captured by his mocking reply, "Oh, the love of fractionally integrated time-series analysis, I suppose," when he is asked by an old friend from graduate school why he's at an APSA meeting. Maveety's descriptions of this gathering of the professional clan and Steve's experiences are spot-on. She deftly captures Steve's chagrin when he realizes his paper is the only one without equations; his feelings of being marginalized by the chumminess of the other panel members; and his mounting estrangement at the conference when it seems that everybody but him has "plans" to meet, have drinks, go out to dinner, or get together for breakfast.

Joel offers a different take on academic life. Joel loves being a graduate student and since his wife works and he has made a virtual career out of picking up the odd teaching job, Fat Pat's cuts don't bother him. What does worry him is the idea

of completing the dissertation. As he muses, "If only people didn't expect you to move on, to graduate to the next level: a Font of Eminent Final Products, with credentials to defend…and credentials to gather." Of the three main characters, Joel's musings are the most intellectualized; he can't stop questioning and making things problematic by linking them to some idea, the more outrageous the better. Maveety gives us plenty of excerpts from Joel's dissertation on hair, and, as good satire should, you are very nearly convinced Joel is on to something. He is drenched in post-modernist theory and New Orleans provides endless quotidian opportunities for his fieldwork on hair. Evelyn, the bearded drag queen, persuades Joel to become participant-observer in the drag scene. When Joel is unexpectedly invited to interview for a job at "Gulf Coast State College: College on the Coast," he seriously considers doing the interview in drag as a post-modernist transgression. He doesn't but this doesn't prevent the interview and everything involved with it from giving Maveety plenty of other chances to put on humorous display of what happens when academic rituals go awry.

What more can I say? This is a book you'll enjoy. It certainly beats the stuff I've been reading lately on law and social choice theory. But that surely sets the bar too low. Trust me. *The Stagnant Pool* is a book in which you'll gladly immerse yourself.

* University Press of the South. Paper $29.95.

BOOKS TO WATCH FOR

HELENA SILVERSTEIN
LAFAYETTE COLLEGE

The dramatic struggle over the outcome of the 2000 presidential election presented judges with an extraordinary political challenge, as well as a historic political temptation. In *The Votes That Counted: How the Court Decided the 2000 Presidential Election*, **Howard Gillman** (University of Southern California) offers a comprehensive yet critical assessment of how well courts coped with the competing expectations for impartial justice and favorable partisan results. Scheduled for release in September 2001 from the University of Chicago Press, the book documents how the participants, the press, the academic community, and the public responded during these tension-filled thirty-six days. Gillman also provides a serious yet accessible overview of the legal strategies and debates—from briefs and oral arguments to final decisions. However, in explaining the behavior of courts, he moves beyond an analysis of law to also take into account the influences of partisanship, judicial ideology, and broader political and historical contexts. The book pays special attention to the judges whose behavior generated the most controversy—the battling justices of the Florida and United States Supreme Courts. After carefully reviewing the arguments for and against their decisions, he concludes that the five justices behind the Bush v. Gore decision acted outside what should be considered the acceptable boundaries of judicial power. Gillman ends with an analysis of why they chose such an unprecedented course of action and an assessment of whether their partisan intervention will have any lasting effect on the Supreme Court's reputation and authority.

In *Overseers of the Poor: Surveillance, Resistance, and the Limits of Privacy*, **John Gilliom** (Ohio University) confronts the everyday politics of surveillance by exploring the worlds and words of those who know it best—the watched. The book lets us in on the conversations of low-income mothers from Appalachian Ohio as they talk about the welfare bureaucracy and its remarkably advanced surveillance system. In their struggle to care for their families, these women are monitored and assessed through a vast network of supercomputers, caseworkers, fraud control agents, and even grocers and neighbors. In-depth interviews show that these women focus less on the right to privacy than on a critique of surveillance that lays bare the personal and political conflicts with which they live. And, while they have little interest in conventional forms of politics, we see widespread patterns of everyday resistance as they subvert the surveillance regime when they feel it prevents them from being good parents. Due to be released in October 2001 by The University of Chicago Press, *Overseers of the Poor* demonstrates the need to reconceive not just our understanding of the surveillance-privacy debate but also the broader realms of language, participation, and the politics of rights.

Since *Brown vs. Board of Education* and the desegregation battles of the 1960s and 70s, the legal pursuit of educational opportunity in the United States has been framed largely around race. But for nearly thirty years now, a less-noticed but controversial legal campaign has been afoot to equalize or improve the resources of poorly funded schools. In *On Equal Terms: The Constitutional Politics of Educational*

Opportunity (Princeton University Press, 2001), **Douglas S. Reed** (Georgetown University) examines the consequences of efforts to use state constitutional provisions to reduce the "resource segregation" of American schools and the politics of the opposition to these decisions. The book compares the relative success of school finance lawsuits to the project of school desegregation and explores how race and class present sharply different obstacles to courts. Since a 1973 U.S. Supreme Court decision that effectively deferred to the states in the matter of educational equity, about a third of state judiciaries have mandated reform of state-level educational funding systems. Reed analyzes both the rhetoric of reform and the widely varying effects of these controversial decisions while critiquing the courts' failure to more clearly define educational equity. The book concludes with a policy proposal that acknowledges obstacles to such efforts and aims to enhance education by fostering racial and economic integration locally.

Combining an historical and strategic analysis, *Prisoners' Rights: The Supreme Court and Evolving Standards of Decency*, (Greenwood Press, 2001) by **John A. Fliter** (Kansas State University), describes the doctrinal development of the constitutional rights of prisoners from the pre-Warren Court period through the current Rehnquist Court. Like many provisions in the Bill of Rights, the meaning of the Eighth Amendment's language on "cruel and unusual punishment" and the scope of prisoners' rights have been influenced by prevailing public opinion, interest group advocacy, and—most importantly—the ideological values of the nine individuals who sit on the Supreme Court. These variables are incorporated in a strategic analysis of judicial decision making in an attempt to understand the constitutional development of rights in this area. Examining dozens of cases spanning 50 years, Fliter's findings support the notion that justices do not simply vote their policy preferences; some seek to influence their colleagues and the broader legal community. In many cases there is evidence of strategic interaction in the form of voting fluidity, substantive opinion revisions, dissents from denial of certiorari, and lobbying to form a majority coalition. The analysis reaches beyond death penalty cases and includes noncapital cases arising under the Eighth Amendment, habeas corpus petitions, conditions of confinement cases, and due process claims.

A Historical and Multicultural Encyclopedia of Women's Reproductive Rights in the United States, edited by **Judith A. Baer** (Texas A&M University) will be available from Greenwood Press in 2002. This encyclopedia contains articles by many well-known scholars and activists about complex and controversial issues relating to women's reproductive rights in the United States. Topics include new reproductive technologies, youth, disability, marriage, and religion as they relate to reproductive rights; public policies and social attitudes concerning sex, fertility control, pregnancy, and motherhood; and the influence of race, class, and gender on reproductive freedom.

Due out in the July is *Understanding the U.S. Supreme Court: Cases and Controversies* by **Kevin T. McGuire** (University of North Carolina at Chapel Hill). A novel introductory textbook on the Court, it uses a series of in-depth case studies to illuminate the findings of empirical research. For example, judicial selection is covered through the lens of the Bork and Thomas nominations; *McCleskey v. Kemp* is used to illustrate how the Court makes decisions on the merits; and the Court's policy impact is examined by considering the consequences of *Buckley v. Valeo*. *Understanding the U.S. Supreme Court* will be published by McGraw-Hill.

Adversarial Legalism: The American Way of Law by **Robert A. Kagan** (University of California, Berkeley) is scheduled to be published later this summer by Harvard University Press. Relying on comparative sociolegal research, *Adversarial Legalism* seeks to show in concrete detail how litigation, adjudication, criminal justice, civil justice, social justice and governmental regulation in the United States differ from similar processes in other highly-developed legal systems. It finds, among other things, that American law generally is more detailed, complicated, and malleable; legal penalties are more severe and threatening; and Americans more often turn to litigation as a way of seeking political goals. In addition, American methods of litigating and adjudicating legal disputes are more lawyer-dominated, adversarial, costly, and unpredictable, which often leads to injustice. Kagan traces the causes of this "adversarial legalism" to American political structures and culture. It arises, he argues, because Americans demand active governmental measures to protect them from harm and injustice, but are simultaneously mistrustful of concentrated governmental power. The political attitudes and fragmented governmental structures that engender American adversarial legalism, Kagan argues, also serve as major obstacles to reforms that might alleviate its costliness, divisiveness, and unjust consequences.

In her forthcoming book, *Judicial Review in State Supreme Courts: A Comparative Study*, **Laura Langer** (University of Arizona) attempts to bridge the gap between the importance of state supreme courts in American government and the amount of scholarly attention to these institutions. In so doing, Langer demonstrates that systematic examination of state supreme court judges across different areas of law can advance our conceptualization of the judiciary and offer a more general theory about judicial review, accountability, and the role of courts in society. Langer systematically examines original data on docketing and decisions regarding the constitutional fate of campaign and election laws, workers compensation laws, unemployment compensation laws, and

welfare laws from 1970-1993. Conceptualizing judges as forward thinking individuals who strategically pursue both policy and electoral goals, the book shows the awesome policymaking powers of state supreme courts and the conditions under which justices are most likely to review and invalidate state laws. Look for *Judicial Review in State Supreme Courts* in January 2002 from State University of New York Press.

In *Habeas Corpus: Rethinking the Great Writ of Liberty* (New York University Press, forthcoming), **Eric M. Freedman** (Hofstra University School of Law) reexamines four of the Supreme Court's most important habeas corpus rulings: one by Chief Justice John Marshall in 1807 concerning Aaron Burr's conspiracy, two arising from the traumatic national events of the 1915 Leo Frank case and the murderous race riots in Elaine County, Arkansas in 1919, and one case from 1953 that dramatized some of the ugliest features of Southern justice of the period. In each instance, Freedman uncovers new original sources and tells the stories of the cases through such documents as the Justices' draft opinions and the memos of Chief Justice William H. Rehnquist when he was a law clerk on the court. Freedman then presents an interpretation that rewrites the conventional view. Building on these results, he challenges legalistic limits on habeas corpus and demonstrates how a vigorous writ is central to implementing the fundamental conceptions of individual liberty and constrained government power that underlie the Constitution.

David K. Ryden (Hope College) has edited *The U.S. Supreme Court and the Electoral Process* (Georgetown University Press, 2000). In this book, academics and practitioners in both law and political science examine major themes raised by the role of Supreme Court decisions in shaping the electoral process. Both challenging and supporting Court actions, these diverse viewpoints show how Court actions mold not only our electoral politics but also constitutional doctrine and fundamental concepts of democracy. Specific cases concern racial redistricting, term limits, political patronage, campaign finance regulations, third party ballot access, and state ballot initiatives limiting civil liberties issues that that directly affect how we choose those who govern us. Notable contributors include Dan Lowenstein, current FEC commissioner Bradley Smith, and a foreword by Lee Epstein.

In *Superintending Democracy: The Courts and the Political Process*, **Christopher P. Banks** (University of Akron) and **John C. Green** (University of Akron) have assembled a diverse collection of essays by nationally recognized scholars, politicians, and lawyers. The book challenges the popular myth that the U.S. Supreme Court is an apolitical institution and analyzes the manner in which the U.S. Supreme Count superintends the electoral process through its judicial decision-making. Studying the intersection between law and politics, the essays consider whether the nation's highest court, as an inherently undemocratic and "counter-majoritarian" political institution, should enter the so-called "political thicket" and decide legal disputes concerning political corruption, campaign finance, political parties, patronage, and redistricting. *Superintending Democracy* will be available in August 2001 from the University of Akron Press.

The Seventh Edition of **David Neubauer's** (University of New Orleans) *America's Courts and the Criminal Justice System* is due to be published in mid-July by Wadsworth (Belmont, CA) with a 2002 copyright. Also by Neubauer is *Debating Crime: Rhetoric and Reality* (Wadsworth 2001). This book focuses on important controversies in the U.S. criminal justice system. It includes a variety of readings devoted to such topics as gun control, the death penalty, race and gender issues, prison privatization, and the war on drugs. Most issues are framed in an "opposing viewpoint" format, encouraging students to think more critically about these controversies.

The Fourth Edition of **Lou Fisher's** *American Constitutional Law* was published this year by Carolina Academic Press.

Send information about your forthcoming work to Helena Silverstein at: silversh@lafayette.edu

Section News and Awards

2001 Law & Courts Award Winners

Lifetime Achievement Award, presented annually to honor a distinguished career of scholarly achievement and service in the field of law and courts, is:
Martin Shapiro, University of California-Berkeley.
Presenting the award is D. Marie Provine, Arizona State University.

American Judicature Society Award (given annually for the best paper on law & courts presented at the previous year's meetings of the American, Midwest, Northeastern, Southern, Southwestern, or Western Political Science Associations):
Howard Gillman, University of Southern California, "The Political Construction of Federal Power in Late Nineteenth-Century America," presented at the APSA meeting in 2000.

Honorable Mention: **Kevin T. McGuire & James A. Stimson** (both at the University of North Carolina, Chapel Hill), "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences," presented at the MPSA in 2000.
Presenting the award is Michael W. McCann, University of Washington.

The Harcourt College Publishers Award given for a book or journal article, 10 years or older, that has made a lasting impression on the field of law and courts for : "On the Fluidity of Judicial Choice," by **J. Woodford Howard**, Jr., Johns Hopkins University, that appeared in 62 APSR 43 (1968).
Presenting the award is Christine Harrington, New York University.

McGraw-Hill Award given for the best journal article on law & courts written by a political scientist & published the previous year awarded to: **Mark Graber**, University of Maryland,
"The Jacksonian Origins of Chase Court Activism," 25 Journal of Supreme Court History 17 (2000).
Presenting the award is Sanford Levinson, University of Texas.

The C. Herman Pritchett Award, given annually for the best book on law & courts written by a political scientist and published the previous year, was awarded to:
Crafting Law on the Supreme Court (Cambridge University Press, 2000) by **Forrest Maltzman**, George Washington U., **James F. Spriggs II**, University of California at Davis, and **Paul J. Wahlbeck**, George Washington U.

Honorable Mention: The Warren Court and American Politics (Harvard University Press, 2000), by Lucas A. Powe, Jr., University of Texas.
Presenting the award is Susan Lawrence, Rutgers University.

The winner of the CQ Press Award for best graduate student paper on law and courts is:
Alec C. Ewald, University of Massachusetts at Amherst, "Getting Ready for Garza? Judge Emilio Garza, Civil Liberties, and the Politics of Judicial Selection."

Honorable Mention to: Rachel P. Caufield, George Washington U.,
"Look Who's Talking: Congressional Decisions to File as Amici at the Supreme Court,"
Presenting the award is James Foster, Oregon State University.

COMPARATIVE JUDICIAL SYSTEMS & POLITICS SHORT COURSE

Political scientists, public lawyers, foreign policy experts, International consultants, even politicians outside the United States have come to recognize that courts and judges can, do, or will play an important part in their governmental or political processes and policy making. Despite this recognition, knowledgeable law and courts specialists continue to note that we understand very little about courts and judges outside the United States and that, as a result, we forfeit what our section past president Lee Epstein called the "comparative advantage." At the same time, there appears to be a very rapidly developing interest in comparative judicial systems and politics among law and courts scholars and teachers.

This short course will provide a brief introduction to the study of comparative judicial systems and politics past, present, and future for those who wish to learn more about this burgeoning field. Presenters in the workshop will include researchers who have studied a wide variety of judicial systems around the world. The short course will explore the reasons for doing comparative judicial research, some of the structural and legal-cultural underpinnings of the world's judicial systems, and some of the special problems encountered in studying and teaching about comparative judicial systems and politics. The short course will also introduce participants to the data resources that increasingly will make comparative judicial research and teaching easier and more fruitful.

Offered as part of APSA's 2001 Annual Meeting, the short course will be taught on Wednesday August 29, 2001. Further details about the short course will be posted on the Law and Courts Discussion List at appropriate times. To join the discussion list, send an e-mail to mailto:listproc@usc.edu>listproc@usc.<mailto:listproc@usc.edu>edu. Please leave the subject line blank and type in the body of your message only: subscribe lawcourts-l <your name>.

For more information, you may also contact the short course organizer:
Neal Tate
Toulouse School of Graduate Studies
University of North Texas,
Denton TX 76203-5459
e-mail::ntate@unt.edu
phone: (940)565-3946
fax: (940) 369-7486.

To register, send the following form and a $15 check (payable to the Law and Courts Section of the APSA) to:
Reggie Sheehan
Law and Courts Secretary-Treasurer
Department of Political Science
Michigan State University
East Lansing, MI 48824.

Comparative Judicial Systems and Politics
Law and Courts Section Short Course

REGISTRATION FORM

Name:_____
Institutional Affiliation:_____

Section Nominees

The Nominations Committee has reported the slate of candidates for Section office that will be presented to the Law and Courts Section business meeting on Friday September 1 at 5:30. They are:

Chair-Elect — Paul Wahlbeck, George Washington University

Executive Committee members (two year terms) —
Mark Graber, University of Maryland
Donald Songer, University of South Carolina
Susan Sterett, University of Denver

Announcements and Calls for Papers

Law & Policy Announces Special Edition

Law and Policy is sponsoring a special issue on the role of"faith-based" organizations in delivering government-sponsored social services. Since the inclusion of "charitable choice" language in the 1996 welform reform law passed by Congress, religious groups are eligible to compete with secular agencies for federal funds to support their social service programs. These programs were initially centered around the Temporary Aid to Needy Families (TANF) provision of the 1996 law, which is administered by the Department of Health and Human Services. Since then, the Departments of Education, Housing and Urban Development, Justice, and Labor have included charitable choice provisions in their regulations governing federal funding to private groups. President George H.W. Bush's announcement during his 2000 presidential campaign to establish the White House Office of Faith-Based and Community Initiatives heightened the attention to charitable choice and the desirability of religious participation in public policy formation and implementation.

We are interested in receiving papers from legal and social science scholars, policy analysts and practitioners that deal with the constitutional and empirical dimensions of charitable choice. Some of the questions we are interested in include: Is charitable choice constitutional? How were religious organizations able to persuade Congress to include charitable choice provisions in federal programs? How have religious organizations mobilized to respond to charitable choice provisions and with what effect? How well do religious groups provide social services? What are the implications of charitable choice for federalism?

We would also appreciate submissions for appropriate referees to review articles. Please submit all inquiries or comments to:
Gregg Ivers, Associate Professor of Government
American University
ivers@american.edu
or
Nancy Reichman, Associate Professor of Sociology
University of Denver
nreichma@du.edu

National Science Foundation Awards Law and Social Science Program (Award Effective Dates from 1/1/2000 to 5/15/2001)

Collaborative Research Award:

Individual-Level Analysis of Supreme Court Justices: A Modification to the US Supreme Court Judicial Databases
Harold J. Spaeth, Michigan State University Sara C. Benesh, University of New Orleans

Compendium Project on the U.S. Courts of Appeals
Ashlyn Kuersten , Western Michigan University

Fifty State Supreme Court Data Project
Melinda G. Hall, Michigan State University
Paul Brace, Rice University

Strategic Defiance of the U.S. Supreme Court
Charles M. Cameron, Columbia University
Jeffrey A. Segal, SUNY Stony Brook
Lee Epstein, Washington University

Comparative Study of Women's Policy Offices: 1970-2000
Amy Mazur Washington State University
Dorothy M. Stetson Florida Atlantic University

Doctoral Dissertation Research Award:

The Supreme Court and Public Opinion: Exploring Diffuse Support and the Role of Values
Donald R. Songer, University of South Carolina
Martha Anne Humphries

Economic Liberalization and the Expansion of Judicial Power in Contemporary Egypt
Michael McCann, University of Washington
Tamir M. Moustafa, University of Washington

Participatory Constitution-Making in Africa
Jennifer Widner, University of Michigan
Devra Coren, University of Michigan

Law and Development: Explaining Legal Change in Emerging Economies
Jennifer Widner, University of Michigan
David L. Finnegan, University of Michigan

Government and Firm-level Responses to the Globalization of Environmental Management
Elinor Ostrom, Indiana University Bloomington
Susan S. Raines, Indiana University Bloomington

The International Matchmaking Industry: Mail Order Bride Migration from the Philippines and Russia to the U.S.
Karen Feste, University of Denver
Lisa Simons, University of Denver

Art & War: Dynamics of International Norm Change
Wayne Sandholtz, University of California, Irvine

Career Award:

Multiple Actors, Competing Risks:
State Supreme Court Justices and the Policy making (Unmaking) Game of Judicial Review
Laura Langer, University of Arizona

Woodrow Wilson International Center for Scholars Names Strum as New Director

Philippa Strum, a member of the Law and Courts section, is the new Director of the U.S. Studies Division at the Woodrow Wilson International Center for Scholars. She will have input into the selection of fellows but will not participate in the final decision-making. She is, however, interested in hearing from Law and Courts members about ideas for possible symposia and conferences. From the new description of the Division: In the years immediately ahead the Division's symposia will have a particular focus on two areas:

1) the need for scholarship related to the policy issues suggested by the 2000 census. This will include, for example, an attempt to assess the needs of the nation as it becomes a uniquely multiracial society with no majority racial group.

2) an examination of both scholarship and the policy-making process in a world of globalization and interdependence. Examples of problems to be considered are the potential impact on U.S. law of international human rights instruments and the relationship between domestic policy and the perception of the U.S. abroad.

Woodrow Wilson International Center for Scholars Announces Followships in the Arts, Social Sciences and Humanities for 2002-2003

The Woodrow Wilson International Center for Scholars announces the opening of its 2002-2003 Fellowship competition. The application deadline is October 1, 2001.

The Center annually awards academic-year residential fellowships to individuals in the social sciences and humanities with outstanding project proposals on national and/or international issues—topics that intersect with questions of public policy or provide the historical framework to illumine policy issues of contemporary importance. Fellows are provided with a stipend (includes a round-trip transportation allowance) and with part-time research assistance. They work from private offices at the Woodrow Wilson International Center in Washington, DC.

Eligiblity: For academic applicants, eligibility is limited to the postdoctoral level and, normally, to applicants with publications beyond the Ph.D. dissertation. For other applicants, an equivalent level of professional achievement is expected. Applications from any country are welcome. All applicants should have a very good command of spoken English. The Center seeks a diverse group of Fellows and welcomes applications from women and minorities.

For application materials, please visit our website at:
www.wilsoncenter.org, or write to:
Scholar Selection and Services Office
Woodrow Wilson Center One Woodrow Wilson Plaza 1300 Pennsylvania Avenue, NW Washington, DC 20004-3027
e-mail: fellowships@wwic.si.edu telephone: 202/691-4170 fax: 202/691-4001

Visiting Scholars
Center for the Study of Law and Society
University of California, Berkeley

The Center for the Study of Law and Society, founded in 1961, fosters empirical research and philosophical analysis concerning legal institutions, legal processes, legal change, and the social consequences of law. The Center invites applications from scholars with interests in all aspects of law and social ordering/social change. Visiting scholars will be part of a scholarly community that includes fellow visitors and a faculty of distinguished socio-legal scholars in law and economics, legal history, sociology of law, political science, criminal justice studies and legal and social philosophy. Core faculty members of the Center include Robert Cooter, Lauren B. Edelman, Malcolm M. Feeley, Robert A. Kagan, Christopher Kutz, David Lieberman, Kristin Luker, Robert MacCoun, Daniel L. Rubinfeld, and Harry N. Scheiber. Among the Law School's faculty members who have conducted research projects in the Center or are otherwise closely affiliated with it are Howard Shelanski, Linda Krieger, Richard Buxbaum, Frank Zimring, and Herma Hill Kay.

Application Requirements

1. Applicants must possess a Ph.D. or J.D. (or foreign equivalent).

2. Applicants must submit a full curriculum vitae.

3. Applicants must submit a cover letter which specifies the time period in which they wish to be in residence at the Center and which describes their proposed program of research or study. Applicants must pursue a program of research or study which is of mutual interest to faculty members at the Center for the Study of Law and Society.

4. Applicants must indicate the source of funding while visiting Berkeley, e.g. sabbatical pay, scholarship, government funding, personal funds, etc. Monthly minimum requirements for foreign exchange scholars are: $1600 per month for the J-1 scholar, $500 per month for the J-2 spouse, $200 per month for each J-2 child.

Among privileges and opportunities of Center visiting scholars are: library privileges at the Law School and at all campus libraries; access to a weekly luncheon-speaker series and other scholarly exchanges; other campus privileges, including athletic facilities; and, when possible, assignment to shared or other office accommodations.

The Center will consider applications for varying time periods, from two weeks duration to the full academic year. Applicants should submit the information listed above by post or e-mail to: Visiting Scholars Program, Center for the Study of Law and Society, University of California, Berkeley, CA 94720-2150, **csls@uclink.berkeley.edu**. Inquiries to the Acting Director, Professor Harry N. Scheiber, **scheiber@uclink.berkeley.edu** are also welcome. The Center's Web site is: **www.law.berkeley.edu/institutes/csls/**

Lang Publishing Seeks Manuscripts

Peter Lang Publishing, Inc., is seeking short manuscripts and book proposals for several topics in its editorial series Studies in Crime and Punishment. Completed manuscripts would between 100 and 150 pages long, and they would be directed towards undergraduate use in criminal justice classes.

Topics include: racial profiling; domestic violence and the law; drunk driving and the law; police brutality; sexual violence; victimless crimes; forensics and the law; juvenile justice; white-collar crime; and crime and popular culture, among other similar topics that would be of interest to undergraduate students.

The editorial concept is that these books would be brief, inexpensive supplements to main texts in an undergraduate criminal justice class and that each would provide an overview of the issues involved in the different topics addressed. Instructors would be able to select from a range of these topics to use in various undergraduate courses.

Series Editors:
Christina DeJong, Michigan State University
David Schultz, Hamline University

Peter Lang publishing, Inc is all seeking submissions for teaching Texts in Law and Politics and Studies in Law and Politics publish textbooks and monographs that explore the multidimensional and multidisciplinary areas of law and politics.

Subject matters addressed in these series include but are not be limited to: constitutional law; civil rights and liberties issues; law, race, gender, and gender orientation studies; law and ethics; women and the law; judicial behavior and decision-making; legal theory; comparative legal systems; criminal justice; courts and the political process; and other topics on the law and the political process that would be of interest to the undergraduate curriculum and education.

Submissions of single-author and collaborative studies as well as collections of essays are invited.

Phyllis Korper, Acquisitions Editor
Peter Lang Publishing
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CONFERENCES, EVENTS AND CALLS FOR PAPERS

Upcoming Conferences

Winter and Spring 2000-2001

Conference	Date	Location	Chair
APSA	Aug 30 - Sep 2	San Francisco, CA	Law & Courts Paul J. Wahlbeck, G. Washington Univ wahlbeck@gwu.edu Con Law & Jurisprudence Nancy Maveety Tulane Univ. nance@mailhost.tcs.tulane.edu
Pacific Northwest PSA	Oct 18-20	Coeur D'Alene, ID	eisinger@lclark.edu
Southern PSA	Nov 7-10	Atlanta, GA	www.olemiss.edu/orgs/spsa
Northeastern PSA	Nov 8-10	Philadelphia, PA	Pres, Cong & Courts Sunil Ahuja ahujasun@shu.edu

"What Role for AJS in Reforming Judicial Elections?"
August 3 & 4, 2001

The American Judicature Society invites you to take part in its annual meeting program, "What Role for AJS in Reforming Judicial Campaigns?". The program will focus on two aspects of judicial campaigns for which various reforms have been proposed—campaign financing and campaign conduct. Deborah Goldberg, Deputy Director of the Democracy Program at the Brennan Center for Justice, will moderate discussions among expert panelists and the audience on the regulation of campaign financing and the creation of campaign oversight committees.

Panel 1: Judicial Campaign Financing
Roger Bybee, Communications Director, Wisconsin Citizen Action
Scott Greenwood, General Counsel, Ohio Chapter of the ACLU
Spencer A. Overton, Professor of Law, University of California-Davis

Panel 2: Judicial Campaign Conduct
Honorable Susan M. Moiseev, 46th District Court of Michigan
Robert A. Sedler, Distinguished Professor of Law, Wayne State University
J. Mark White, 1998 Alabama Judicial Campaign Oversight Committee

Registration fee: $150

For more information, contact Celia Colista at (312) 357-8811 or ccolista@ajs.org.

INSTITUTIONAL GAMES AND THE U.S. SUPREME COURT
2-3 November 2001

The Center for Presidential Studies, Policy, and Governance, Bush School of Government and Public Service &
The Department of Political Science, Texas A&M University - College Station, Texas

***Focus of Conference*:**
Game theoretic and strategic choice models have advanced exciting, innovative ways of thinking about the U.S. Supreme Court and its interactions with Congress, the Presidency, and the lower federal courts. The conference brings together a select number of scholars interested in the politics of the judiciary and legal process whose research is advancing the current state of game theoretic approaches

Conference Topics and Invited Participants:
Professors Kenneth A. Shepsle, Harvard University, and Lawrence Baum, Ohio State University, will serve as moderators of the conference proceedings.

The Supreme Court's interactions with Congress – New research that establishes stronger theoretical and empirical grounds for separation of powers models.
Andrew Martin, Washington University, St. Louis --- Virginia Hettinger, University of Connecticut ---Maxwell Stearns, University of Michigan Law School --- Matthew Caleb Stephenson, Harvard University --- James R. Rogers, Texas A&M University

The Court's encounters with the "administrative presidency" and the federal bureaucracy including the Office of the Solicitor General.
Christopher Zorn, Emory University --- Frank B. Cross, University of Texas at Austin --- Emerson Tiller, University of Texas at Austin --- Joseph L. Smith, Grand Valley State University --- Charles Shipan, University of Iowa

The Supreme Court and the federal courts of appeals and district courts – Work leading to more complex and subtle understandings of principal-agent models and strategic behavior by judges and the courts.
Charles Cameron, Columbia University --- Thomas Hammond, Michigan State University --- Reginald Sheehan, Michigan State University --- Christopher Bonneau, Michigan State University --- Stefanie A. Lindquist, University of Georgia --- Susan B. Haire, University of Georgia --- Steven Van Winkle, SUNY-Stony Brook

The conference papers will be revised and edited to prepare them for publication as a monograph. Professors Shepsle and Baum have agreed respectively to write a foreword and afterword for the book.

For information about the conference, please contact —
Roy B. Flemming roy@polisci.tamu.edu
James R. Rogers rogers@polisci.tamu.edu
Jon R. Bond jonbond@polisci.tamu.edu

Law and Courts is the newsletter of the Law and Courts Section of the American Political Science Association.

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Law and Courts

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