

Federal Judicial Nomination Simulations in the Political Science Classroom

Nancy Bays Arrington	Matthew E. Baker	Adam G. Rutkowski
<i>Associate Professor</i>	<i>Assistant Teaching Professor</i>	<i>Assistant Professor</i>
Department of Political Science	Dept. of Political Science	Dept. of Political Science
Cal Poly, San Luis Obispo	Emory University	Troy University
naarring@calpoly.edu	matthew.e.baker@emory.edu	arutkowski@troy.edu

Abstract

This article introduces various versions of federal judicial nomination simulations developed to expose students to the nuts and bolts of this vital political process. We first discuss how simulations can be beneficial to both stimulate student learning and introduce them to intricate political processes. Then we discuss the intended learning outcomes and procedures of our simulation, specifically that students would have a stronger understanding of the qualifications of lower federal court judges and what role their political backgrounds might play in the process. As we develop the project, we will discuss across-simulation variation stemming from our institutional and time differences. Later, we evaluate how this simulation influenced students' understanding of the appointment process and also how it may have changed their view of the courts, judicial legitimacy, and the political process more broadly. Finally we contextualize these findings with broader lessons about political simulations in undergraduate teaching and how educating students on process might change their views on legitimacy.

Introduction

The confirmation process for lower federal court judges receives little attention from the popular media. As a result, the public is often not aware of the inner workings of this important process. While the public is more exposed to the confirmation processes of Supreme Court justices, these nominations are somewhat of a rare event and account for just a small percentage of the total nominations to the federal bench. For example, President Biden had the opportunity to nominate only one justice to the United States Supreme Court during his tenure. Ketanji Brown-Jackson's confirmation hearing was widely publicized and captivated a large portion of the American public. While many Americans were aware of this historic confirmation process, they are likely less aware of Biden's record-breaking number of nominations to the lower federal courts. In four years, 187 of Biden's nominees were confirmed to the U.S. District Courts and 45 were confirmed to the U.S. Courts of Appeals.

The general lack of knowledge about nominations to the lower federal courts is also seen in the Political Science classroom. Although students often possess the basic knowledge that federal judges are nominated by the President and confirmed by the Senate, they usually do not understand specific features of this process, such as the importance of the Senate Judiciary Committee, nominee backgrounds and characteristics, the role of interest groups in the confirmation process, and the relevant Senate floor procedures.

In this paper, we develop a classroom simulation activity that exposes students to the lower federal court confirmation hearing process – one of the few that involves all three branches of government. Students will learn what types of individuals that the president nominates, how the Senate reacts during hearings, and how the judicial nominees present themselves to the Senate.

We begin by discussing the importance of simulations in the Political Science classroom and how our simulation provides a novel approach. We then outline expected student learning outcomes and how exposure to this political process might affect students' knowledge and views on court legitimacy. After explaining our simulation procedures, we discuss our preliminary research design

and data collection process. We conclude by contextualizing our project within the broader sphere of political simulations in undergraduate teaching.

The Importance of Simulations in the Judicial Politics Classroom

Simulations are used frequently in the Political Science classroom to reinforce knowledge of different political processes. The efficacy of simulations depends on the level of engagement and learning opportunities provided (Asal and Blake, 2006). Other scholars find that simulations are most successful when students are active participants in their design and are allowed to make changes as the simulation develops in real time (Forester and Holtey, 2024). Thus, simulation games should fully immerse students as participants in the political processes being simulated and give them agency over how the simulation progresses. This leads to a deeper understanding of materials presented in lectures and long-term retention of that material.

Although simulations are commonly used by Political Science educators, not all subfields are equally represented in their use. Of the articles published on simulations, a significant percentage of them cover processes in International Relations, almost double the percentage of those related to American Politics and Law and Courts (Kammerer and Higashi, 2021).

Although IR simulations account for a large portion of classroom games, those related to American courts are not uncommon. These simulations usually focus on Supreme Court processes such as nomination/confirmation (Williams, 2022) or oral arguments/decision-making (Williams and Chergosky, 2018). Games focused on Supreme Court nominations and confirmations usually involve all three branches of government and deeply involve students in the process.

The evaluation of the effectiveness of the Supreme Court selection simulations focus on pre- and post-knowledge and interest in the process (Williams, 2022). While the concentration on the Supreme Court is a natural start since students are most familiar with the highest court in the land, we argue that more attention should be given to the confirmation of lower court judges as well. Though similar in part, lower court confirmation processes are different in many ways (e.g., reduced presidential influence over nominee selection, heavier reliance on home-state senators via

senatorial courtesy, and variations in the style of confirmation hearings). Since most federal cases are terminated well before they reach the Supreme Court, student understanding of how these judges are confirmed is vital.

Another missing piece in the current puzzle of using judicial confirmation hearing simulations is how participation in these games influences students' views on court legitimacy. Scholars have grappled with how Americans form and hold opinions towards the judicial branch for many years (Badas, 2019; Gibson and Spence, 2003; Gibson and Caldeira, 2009). Since a college classroom is a microcosm of the American public, discovering how simulations of the political process of confirmation affect attitudes about the judiciary provides an avenue toward better understanding of court legitimacy. In the following sections, we outline the learning objectives and procedures of our lower court confirmation simulation.

Simulation Learning Objectives

Our simulation is designed to reinforce the content of a traditional lecture on judicial confirmations while also encouraging students to engage with the various shortcomings of modern confirmations. First, the simulation should increase students' ability to define the steps in the federal judicial confirmation process. A fun, interactive experience where students can role-play both senators and nominees will reinforce the material covered in the readings and lectures.

Related, students should have an increased ability to describe the roles of the different actors in the confirmation process. By researching their nominees and senator's backgrounds, they will be better equipped to understand the competing interests of these players in the nomination process.

Through the confirmation simulation, students will also demonstrate the inter-branch tensions through role-play. By asking pointed questions to cross-party nominees and trying to support co-partisan nominees, we would expect students to have an increased appreciation of the tension between a senator's political interests and the nominee's goal of pleasing their appointor while actually getting confirmed.

The final two goals of the simulation relate to students reflecting on their experiences. In their

post-simulation reflections, students should analyze how the goals of the differing actors in the confirmation process conflict. Finally, students should also critique the drawbacks of the institutional arrangement of the confirmation process, with an eye toward the legitimacy of both the legislative and judicial branches.

Simulating the Confirmation Hearing

The lower court confirmation simulation is designed for an upper level Judicial Politics course where students are learning about the legal system in through the lens of political science. Instructors should lecture on the topic of federal judicial selection in the class immediately before the confirmation simulations. Additionally, in the week prior to the simulation, students watch a video clip of a recent nominee appearance before the Senate Judiciary Committee, while also exploring that nominee's Senate Judiciary Committee Questionnaire (SJQ). In a course that meets for 75 minutes, we would anticipate the simulations to take two class periods, one with a simulated Republican majority with a same-party president and one session with a Democratic majority considering a nominee from a Democratic president.

Students are then organized into small groups of 3 to 6 (depending on class size) where students will be select from the following roles: nominee, majority senator, minority senator. If the class is larger than 30 students, students could also take on the role of nominee counsel, majority counsel, and minority counsel whose role is to support the nominees during the simulation.

Across the class, the instructor will select an even balance of Republican-President judicial appointees and Democratic-President judicial appointees, as well as a variety of senators from each party. One of the simulation days will consider the Republican appointees all on the same day and Democratic appointees on the same day to further simulate the real-life nature of the hearings.

Instructors should select judicial nominees who faced varying levels of scrutiny from the Senate Judiciary committee. One possible method to "balancing" the nominees could stem from the nominee's JCS score or based on their level of political activities in their background. The ultimate pedagogical goal here is to have some nominees that would face more controversial questions with

others receiving potentially less scrutiny.

At least 24 hours before the simulation, students submit preparatory materials based on their role. Prospective nominees should familiarize themselves with their nominee's SJQ and write at least one challenging question and a proposed response to this question. Each senator should familiarize themselves with the nominee questionnaires and prepare 2 questions for each nominee. Senators will be encouraged to familiarize themselves with their senator's background and history on the committee. Majority/minority counsel roles should draft 3 questions for each nominee and nominee counsel should prepare 3 potentially challenging question for their nominee along with a proposed answer. This process ensures students prepare and anticipate the hearings in the way that nominees might. Students should also be encouraged to coordinate with their counsel (if these roles are needed) in preparation.

On the day of the simulation, nominees should sit in the front of the classroom with their counsel behind them. Senators should sit with their counsel. The simulated chair of the proceedings should formally recognize each senator, who have 5 minutes total to question each nominee. Like the actual hearings, the chair should recognize the simulated committee members alternating from the majority to minority side in order of seniority.

Instructors should encourage students to study their nominees and the roles of majority and minority senators. For nominees from the other party, students should be encouraged to ask probing and challenging questions. For same-party nominees, students will likely ask more "softball" questions. Across both parties, instructors should have students focus on the qualifications of a nominee and how best to capitalize on the positives and negatives of that nominee.

After both days of the simulation, students should be assigned a brief reflection assignment, to assess how the learning in the simulation might have changed their views on three dimensions: the role of the Senate in nominations, the legitimacy of the selection process, and the legitimacy of the courts.

Research Design

We collect data in two ways.* First, students take anonymous pre- and post- simulation surveys. These surveys include questions to assess specific learning objectives of the lecture and simulation (what are the rules of federal appointments, for example) and student attitudes towards legal self-efficacy, the confirmation process, and the political processes more broadly. In addition to the surveys, we ask for student consent to include their post-simulation reflection assignments in our study. For students who consent, we download and de-identify the work before employing qualitative content (Braun and Clarke, 2006) analysis to assess student experiences of the simulations.

If the simulation effectively augments the lecture, then the percentage of students who correctly answer knowledge-based questions should increase between the lecture and the simulation.† (See Appendix 1a for a full list of survey questions.) If the learn-by-doing experience of the simulation shapes student attitudes about judicial appointments and the broader political process, then we would observe a change both within students and in the aggregate on answers about attitudes towards politics (see Appendix 1b for a complete list of questions to measure student attitudes). Finally, if the experience of participating in a simulated confirmation hearing improves student legal self-efficacy, then students will be more likely to indicate stronger agreement with survey questions about success in legal education and careers after the simulation.

Importantly, we run the simulation across three different universities with three different instructors (See table 1 for a summary). This variation in student demographics allows us to assess overall efficacy of the simulation AND to assess if the simulation may be more useful for different types of students.

*Cal Poly IRB approval #2024-232

†We include in the survey a question that allows us to match student pre- and post-simulation surveys without re-identifying the data. Therefore, we are able to both measure the overall percentage of correct answers per class and improvements for each student.

Table 1: Courses Included in Our Study

University	University Type	Term	Course	# Class Sections	# Students Enrolled	# Students Participating
Cal Poly, SLO	Public (CSU)	Winter 2025	POLS 245: Judicial Process	2	TBD	TBD
Troy University	Public	TBD		TBD	TBD	TBD
Emory University	Private	TBD		TBD	TBD	TBD

Data

Discussion & Conclusion

This paper introduces a novel lower federal court confirmation simulation procedure that tests how participation influences levels of knowledge and views of legitimacy of this political process. By conducting the simulation and corresponding survey at three different institutions (a public R2 institution, a public regional university, and a private R1 institution) in varied geographic locations, our results will be representative of college students across the country. We plan on finalizing data collection by the end of 2025. This new simulation procedure will provide judicial politics instructors with an innovative way to reinforce their traditional lectures on the politics of judicial confirmation. We anticipate that our results will show that exposure to these intricate processes will influence both knowledge and perceptions of legitimacy.

References

- Asal, Victor, and Elizabeth L. Blake. 2006. "Creating Simulations for Political Science Education." *Journal of Political Science Education* 2(1):1–18.
- Badas, Alex. 2019. "The Applied Legitimacy Index: A New Approach to Measuring Judicial Legitimacy." *Social Science Quarterly* 100(5):1848–1861.
- Braun, Virginia, and Victoria Clarke. 2006. "Using Thematic Analysis in Psychology." *Qualitative Research in Psychology* 3(2):77–101.
- Forester, Jett Janel, Summer, and Bjorn Holtey. 2024. "From Lab Rats to Mad Scientists: Cultivating Agentic Learning Through Student-Led Simulation Redesign." *PS: Political Science and Politics* 2024:440–446.
- Gibson, Caldeira Gregory A., James L., and Kenyatta Spence, Lester. 2003. "Measuring Attitudes toward the United States Supreme Court." *American Journal of Political Science* 47(2):354–367.
- Gibson, James L., and Gregory A. Caldeira. 2009. "Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court." *Journal of Politics* 71(2):429–441.
- Kammerer, Edward F. Jr., and Brenden Higashi. 2021. "Simulations Research in Political Science Pedagogy: Where is Everyone?" *Journal of Political Science Education* 17(1):142–147.
- Williams, Ryan J. 2022. *Pick a Justice: Simulating Judicial Selection on the US Supreme Court*, Routledge.
- Williams, Ryan J., and Anthony J. Chergosky. 2018. "Teaching Judicial Politics Through a Supreme Court Simulation." *Journal of Political Science Education* 15(1):17–36.

Appendix 1a

Questions to assess student knowledge (adapted from Gibson and Caldeira 2009):

1. What words or ideas do you associate with the judicial branch of the US Government? Briefly jot a few down here.
2. Some judges in the U.S. are elected; others are appointed to the bench. Do you happen to know if the justices of the U.S. Supreme Court are elected or appointed to the bench?
 - (a) Elected
 - (b) Appointed
 - (c) I don't know
3. Some judges in the U.S. serve for a set number of years; others serve a life term. Do you happen to know whether the justices of the U.S. Supreme Court serve for a set number of years or whether they serve a life term?
 - (a) Set number of years
 - (b) Life term
 - (c) I don't know
4. Do you happen to know which party has the most members in the United States Senate in Washington DC?
 - (a) the Republican Party
 - (b) The Democratic Party
 - (c) I don't Know
5. In your opinion, which of the following statements best describes how judges on the U.S. Supreme Court are selected?
 - (a) They are directly elected by a vote of the people
 - (b) The president alone decides who will become a Supreme Court judge
 - (c) The U.S. Senate alone decides who will become a Supreme Court judge
 - (d) The president nominates candidates for the Supreme Court, but for the nominee to become a Supreme Court judge, the U.S. Senate must give its agreement to the nomination.
6. Some judges in the U.S. are elected. Do you happen to know if the judges to lower federal courts (District and Circuit court judges) are elected or appointed to the bench?
 - (a) Elected
 - (b) Appointed
 - (c) I don't know

7. Some judges in the U.S. serve for a set number of years; others serve a life term. Do you happen to know whether lower federal courts (District and Circuit Court) judges serve for a set number of years or whether they serve a life term?

- (a) Set number of years
- (b) Life term
- (c) I don't know

In your opinion, which of the following statements best describes how lower federal court (District and Circuit Court) judges are selected?

- (a) They are directly elected by a vote of the people
- (b) The president alone decides who will become a Supreme Court judge
- (c) The U.S. Senate alone decides who will become a Supreme Court judge
- (d) The president nominates candidates for the Supreme Court, but for the nominee to become a Supreme Court judge, the U.S. Senate must give its agreement to the nomination.

Appendix 1b

Questions to measure Legal self-efficacy:

1. Are you interested in pursuing a law school or a legal career?
 - (a) Yes
 - (b) No
 - (c) Maybe
2. From the scale of strongly disagree to strongly agree, how much do you agree with the following statements:
 - I will be able to achieve most of the legal/professional goals that I set for myself.
 - I am confident that I can perform in effectively on many different law school and legal tasks.

Questions to measure attitudes towards political institutions broadly (adapted from Gallup):

1. Our federal government is made up of three branches: an executive branch, headed by the president; a judicial branch, headed by the U.S. Supreme Court; and a legislative branch, made up of the U.S. Senate and House of Representatives. How much trust and confidence do you have at this time in the executive branch headed by the president?
 - (a) A great deal
 - (b) A fair amount
 - (c) Not very much
 - (d) None at all

2. How much trust and confidence do you have at this time in the judicial branch headed by the U.S. Supreme Court?
 - (a) A great deal
 - (b) A fair amount
 - (c) Not very much
 - (d) None at all
3. How much trust and confidence do you have at this time in the legislative branch, consisting of the U.S. Senate and House of Representatives?
 - (a) A great deal
 - (b) A fair amount
 - (c) Not very much
 - (d) None at all

Questions to measure attitudes towards political institutions broadly (adapted from Gibson, Caldeira, and Spence 2003):

1. If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether.
 - (a) Agree Strongly
 - (b) Agree somewhat
 - (c) Neither Agree or Disagree
 - (d) Disagree Somewhat
 - (e) Disagree Strongly
2. The right of the Supreme Court to decide certain types of controversial issues should be reduced.
 - (a) Agree Strongly
 - (b) Agree somewhat
 - (c) Neither Agree or Disagree
 - (d) Disagree Somewhat
 - (e) Disagree Strongly
3. The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.
 - (a) Agree Strongly
 - (b) Agree somewhat
 - (c) Neither Agree or Disagree

- (d) Disagree Somewhat
 - (e) Disagree Strongly
4. The decisions of the U.S. Supreme Court favor some groups more than others.
- (a) Agree Strongly
 - (b) Agree somewhat
 - (c) Neither Agree or Disagree
 - (d) Disagree Somewhat
 - (e) Disagree Strongly
5. The U.S. Supreme Court gets too mixed up in politics.
- (a) Agree Strongly
 - (b) Agree somewhat
 - (c) Neither Agree or Disagree
 - (d) Disagree Somewhat
 - (e) Disagree Strongly
6. The U.S. Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court's decision.
- (a) Agree Strongly
 - (b) Agree somewhat
 - (c) Neither Agree or Disagree
 - (d) Disagree Somewhat
 - (e) Disagree Strongly

Questions to measure attitudes towards political institutions broadly (adapted from Badas 2019):

1. Having judges serve a fixed term on the Court like six or eight years rather than serving life terms.
- (a) Strongly Support
 - (b) Support
 - (c) Oppose
 - (d) Strongly Oppose
2. How strongly would you support/oppose this proposal? Having judges elected by the people rather than appointed by the president.
- (a) Strongly Support
 - (b) Support

- (c) Oppose
 - (d) Strongly Oppose
3. Justices on the Court who consistently make decisions at odds with what the majority want should be removed from their position. Please indicate your level of agreement.
- (a) Strongly Agree
 - (b) Somewhat Agree
 - (c) Neither Agree or Disagree
 - (d) Somewhat Disagree
 - (e) Strongly Disagree

Open-ended Questions (Post-Simulation Survey Only)

1. What was most surprising to you about what you learned about the Supreme Court confirmation process during the in class simulation?
2. What words or ideas to you associate with the judicial branch of the US Government? Briefly jot a few down here.