

# POLS 4499-01: Judicial Behavior & Process

## Fall 2017

Department of Political Science  
Idaho State University

### 1 Instructor Information

Shane A. Gleason, PhD  
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Office Hours: Tuesdays: 12:30-1:30pm  
Wednesdays 12:30-2:30pm  
and by appointment  
Class Location: Rendezvous 103  
Course Time: 11:00am to 12:15 TR

### 2 Course Description and Purpose

In our republican system of government the courts are the guardians of the Constitution. As the recent debate over the confirmation of Justice Gorsuch demonstrates, courts and the often unelected judges that staff them, play an integral role in our daily lives. How then, do judges make their decisions? Does putting on a robe transform a judge into a legal computer? Do judges merely pursue their personal policy preferences? Perhaps something else like the institutional context or the resources at hand drives judicial decision-making? This course explores the determinants of judicial behavior and introduces you to the function and organization of the judicial system in the United States.

In this course, we will focus on the courts as both legal and political institutions, with an emphasis on the political nature of judicial decision-making, and the relationship between the courts and the other branches of government. While much of our time will be dedicated to the study of the Supreme Court, we will also address the role and function of trial and appellate courts, at the state and federal levels.

A key component of this class are your critical reading, writing, and organizational skills. Toward that end, we will read several scholarly articles over the course of the semester in addition to the more conventional textbook, to help build your critical thinking skills. Additionally, the emphasis in the exams is applying what we have covered in class to broader contexts. Since writing is a vital skill that is important regardless of your major or eventual career, you will produce a group research paper that explores an aspect of judicial behavior in greater depth. Feedback and direction will be provided on the research paper throughout the semester.

### 3 Course Format

This course is heavily readings based, from both the text book and supplemental materials available on Moodle. While the class is technically lecture based, I find class is more fun when we have a seminar discussion rather than me talking for 75 minutes. Please come prepared to discuss the readings and with any questions you might have. It is okay if you don't understand them fully, but please give it your best effort.

## 4 Requirements

### Text

There is one required books, which the majority of our readings will come from. Other readings are posted on Moodle and are noted on the course schedule.

The book is available at the campus bookstore; although it is available at a *substantially* lower rate online. To this end, I provide the ISBN for the book below. After the first week I expect you to have the book and bring it with you to class. Unfortunately, I will not be able to place the book on course reserve at the library.

1. Miller, Mark C. 2015. *Judicial Politics in the United States*. Westview Press: Boulder, CO. ISBN: 978-0-8133-4679-3

### Assessment<sup>1</sup>

This course is worth 100 points which are broken up over several different items

- Exams: 40 points
  - Research Paper Assignment or Synthesis Papers: 40 points
  - Quizzes: 10 points
  - Participation: 10 points
1. **Exams (40 points)**—There are two exams, each is worth 20 points. This is to say each exam is worth two letter grades. Exams will consist of short identification terms and essays. The first exam will be take-home, but the final exam is in class and is bluebook/greenbook based. **You must bring a bluebook/greenbook to the final exam.** I suggest you go to the bookstore and buy a few bluebooks/greenbooks at the start of the semester so you are not in any danger of not having one on exam day this semester or in future semesters (They cost about 50 cents each). At least one week before the final exam I will give you a study guide which lists several possible questions for the exam. A subset of those questions will appear on the actual exam. You should note that if you are unable to take the exam at the scheduled time, the make-up exam will be a separate research paper.
  2. **Research Project OR Synthesis Papers (40 points)**— You will have the choice to write *either* a research paper addressing some aspect of judicial behavior *or* three synthesis papers over the course of the semester. Which you prefer to write is up to you. I encourage you to take the research paper route if you have taken either Voting & Public Opinion or Research Methods. If you have not taken either of those classes I encourage you to go the synthesis paper route. Of course, I will be happy to assist you with either approach you take. Importantly, both routes will be broken up over several smaller assignments. For more information on the writing assignments please see the writing assignment handout available on Moodle.

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<sup>1</sup>This assessment scale only applies to undergraduates. Graduate students, please see the POLS 5599-02 Supplement for additional information.

3. **Quizzes (10 points)**— Periodically throughout the semester I will administer unannounced quizzes. These quizzes will be given at the start of class and will consist of multiple choice, true or false, fill in the blank, and/or short answer items. They can cover anything previously discussed in class or anything from that day’s readings. Quizzes will be passed out at exactly 11:00AM and no quizzes will be passed out after that time, so it is important to arrive to class on time. There will be a total of seven quizzes; I will take your top five quizzes over the course of the semester to compile your total quiz score (with each worth 2% of your final grade). Quizzes cannot be made up, therefore it is imperative you attend class regularly, read for class, and are on time for class.
4. **Participation (10 points)**– Class is more fun when it is not just me talking and I will accordingly call on students to provide summaries of the readings. I am aware, however, that not everyone is an outgoing person that enjoys talking. To this end, I consider active listening to be participation.

### Assessment Scale

A: 93-100	A-: 90-92	B+: 87-89	B: 83-86	B-: 80-82	C+: 77-79
C: 73-76	C-: 70-72	D+: 67-69	D: 63-66	D-: 60-62	F: <60

## 5 Course Policies

### Contacting the Instructor

I am happy to help you via e-mail, telephone, and in person. I have several office hours posted, if my office hours do not fit your schedule let me know and we can schedule a meeting at a time that is more convenient. If you come to office hours you should come prepared; bring your book and notes and read the material in advance. You can call me on my office phone if you like, but e-mail may be faster if I am away from my desk. If you contact me via e-mail, I will respond within 48 hours, though in most cases it will be less than six hours. However, in any e-mail you must identify yourself and use proper format which consists of an opening (As simple as the recipient’s name), a closing (as simple as your name), and a descriptive message subject. If you do not follow that convention or if you use Internet shorthand (ie: “u” instead of “you,”) I will not reply to the message.

### Make-up Exams and Assignments

To qualify for a make-up test a student must notify me of the absence in advance via e-mail and provide documentation. Make-up exams will be a written research paper.

Papers are due in hard copy at the beginning of the class on the date indicated in the schedule. I will not accept e-mail copies or papers placed under my door. Please do not be afraid to print multiple rough drafts and revise them before turning them in. I am happy to look at drafts and help you with crafting your final paper. I do not accept excuses about dogs, computers, or traffic. Be responsible.

## Technology in the Classroom

I understand that laptops and tablets have become the primary means of note taking for many of you. To this end, you are welcome to bring those devices to class. *However*, I ask that you only use them for class purposes. So, you can take notes and view the readings, but please do not browse the Internet or update Facebook in class. The screens are distracting to those around you and take away from learning. No cell phones are permitted to be out in class without first notifying me of a valid reason (i.e.: You're waiting on a phone call/ your kids are home alone).

However, I would like to *discourage* you from using your laptop to take notes. Research indicates that students retain information better when writing it by hand. This is because you must synthesize what is said as you write (as people cannot write as fast as they can type). By synthesizing what you hear into notes rather than typing what is said verbatim you are more likely to retain information. That said, the choice is yours.

Particularly with new technology, some students opt to record lectures to compliment their notes. If you wish to do so, please let me know before you record me. You are more than welcome to record, I just want to know when/if I am being recorded.

## Extra Credit

The only extra credit I offer is a one point bonus on each writing assignment for going to the writing center. Since the research paper is split over multiple assignments, you can potentially increase your letter grade. If you do so, you can potentially get a 4% bump in your final grade.

## Academic Honor Code

Academic integrity is the expected norm for all academic activity at ISU, and all members of the ISU community are expected to act in accordance with this principle. Academic integrity is the pursuit of scholarly activity in an open, honest, and responsible manner. Consistent with this expectation is an ISU code of conduct that all students should act with personal integrity, respect other students dignity, rights and property, and help create and maintain an environment in which all can succeed through the fruits of their efforts. Academic integrity includes a commitment not to engage in or tolerate acts of deception, falsification, or misrepresentation. Such acts of dishonesty violate the fundamental ethical principles of the University community and compromise the worth of the work completed by others.

Plagiarism is an act of academic dishonesty and shall be dealt with according to ISU policy. Plagiarism is any misrepresentation of another's work as your own. For example, copying portions of articles, papers, web pages, etc, or using portions of another person's work (either word for word or paraphrasing) without proper citations. If you have questions about plagiarism, please come talk to me, or refer to Plagiarism Statement written by the ISU Department of English and Philosophy: (<http://www.isu.edu/english/DeptDocs/PlagiarismStatement.pdf>).

I adhere to the University policy regarding academic misconduct and expect academic integrity. Academic misconduct will result in an "F" for the assignment, a possible "F" for the course, and the filing of charges with the University against the student involved. Academic misconduct includes, but is not limited to, taking credit for work done by others, cheating, and helping others to cheat.

I encourage students to study together and exchange ideas and information, but you must do your own work when taking exams and completing writing assignments. If you are unclear on this topic, please let me know. I am happy to discuss it further.

### **Students with Disabilities**

ISU is committed to providing equal opportunity in education for all students. If you have a diagnosed disability or if you believe you have a disability (physical, learning, hearing, vision, psychiatric etc.) that might require reasonable accommodation in this course, please contact the Disability Services Center, Rendezvous Building, Room 125 (282-3599) or on the web at <http://www.isu.edu/ada4isu>. It is the responsibility of students to contact instructors during the first week of each semester to discuss appropriate accommodations. Of course any communication with me about disabilities remains strictly confidential.

### **Classroom Courtesy**

Classroom courtesy is an essential component of creating an effective learning environment. All students have the right to learn without unnecessary distractions. These distractions include: cell phones, talking during lectures (unless recognized by the instructor), reading newspapers, falling asleep, etc. If you need a cell phone for emergency purposes, leave it on vibrate. Entering and leaving are also significant sources of distraction. It is your responsibility to be on time and to stay for the entire period. In circumstances where you need to leave early, tell the instructor beforehand. Repeated disruptions of class will lead to a reduction in your final grade.

Most importantly, class discussions of law will include several sensitive topics which can lead to strong feelings and heated debate. Because this is a college classroom, all discussion must be respectful and scholarly. This is to say you must be respectful, in both content and tone, of diverse opinions and not make personal or partisan attacks.

### **Acceptable Comments**

- are respectful of diverse opinions and open to follow up questions and/or disagreement
- are related to class and/or the course material
- focus on advancing the discussion about issues related to the course and/or course material rather than personal beliefs, and
- are delivered in normal tones and a non-aggressive manner.

### **Unacceptable Comments**

- are personal in nature. This includes attacks on a person's appearance, demeanor, or political beliefs.
- include interrupting the instructor or other students. Raise your hand and wait to be recognized.

- often use the discussion to argue for political positions and/or beliefs. If political discussions arise, they must be discussed in a scholarly way (see above).
- may include using raised tones, yelling, engaging in arguments with other students and being threatening in any manner.
- include ignoring the instructor's authority to maintain the integrity of the classroom environment.

### **Disclaimer**

Since politics broadly and the courts specifically are a reflection of the society in which we live, we will cover several topics which may be controversial. You have my assurance that I will do everything reasonably related to keeping these discussions academic.

### **Syllabus Change Policy**

This syllabus is a guide for the course and is subject to change with advanced notice. These changes may come via e-mail. Make sure to check your university supplied email regularly. You are accountable for all such communications.

## **6 Tentative Course Schedule**

A few notes about reading the course schedule:

- “*Miller*” refers to the required Miller book
- “(M)” means that reading can be found on Moodle

### **Course Introduction**

Tuesday August 22– Introduction to the Course

- *No readings*

### **Judicial Behavior Basics**

Thursday August 24– Judicial Behavior Basics

- Miller: Chapter 2
- Miller: Chapter 7

### **Models of Judicial Decision Making**

Tuesday August 29– The Legal & Attitudinal Models

- Miller: Chapter 8
- Baum, Lawrence. 1994. “What Judges Want: Judges’ Goals and Judicial Behavior.” *Political Research Quarterly*. 47: 749-768. (M)

Thursday August 31– The Legal & Attitudinal Models (cont.)

- Epstein, Lee, Valerie Hoekstra, Jeffrey A. Segal, and Harold J. Spaeth. 1998. “Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices.” *Journal of Politics*. 60: 801-818.
- Giles, Michael W., Joshua Strayhorn, and Todd Peppers. 2015. “Policymaking Under Constraint: Decision Modes in the U.S. Courts of Appeals.” *Justice System Journal*. 36(2):95-118. (M)

## Judicial Selection

Tuesday September 5– Judicial Selection

- Miller: Chapter 3
- Epstein, Lee and Jeffrey A. Segal. 2005. *Advice and Consent: The Politics of Judicial Appointments*. Oxford University Press: New York. (selections) (M) (*skim this one*)

Thursday September 7– Judicial Selection (cont.)

- Cameron, Charles M., Albert D. Cover, and Jeffrey A. Segal. 1990. “Senate Voting on Supreme Court Nominees: A Neoinstitutional Model.” *American Political Science Review*. 84(2): 525-534. (M)
- Shipan, Charles R. and Megan L. Shannon. 2003. “Delaying Justice(s): A Duration Analysis of Supreme Court Confirmations.” *American Journal of Political Science*. 47(4):654-668. (M)
- Diaz, Albert and James Wynn. 2017. “How Long Should Supreme Court Justices Serve?: Balancing Judicial Independence and Judicial Accountability.” *Marquette Lawyer*. (M)

Tuesday September 12– Library Research Tutorial

- *No readings*
- *Class meets in Library 212*

## Other Actors at the Court

Thursday September 14— Interest Groups

- Miller: Chapter 9 (*just pages 213-224*)
- Collins, Paul M. 2007. “Lobbyists Before the U.S. Supreme Court.” *Political Research Quarterly*. 60:55-70. (M)
- Whitford, Andrew B. 2003. “The Structures of Interest Coalitions: Evidence from Environmental Litigation.” *Business & Politics*. 5(1):45-64. (M)

Tuesday September 19– Attorneys

- McGuire, Kevin T. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *Journal of Politics*. 57:187-196. (M)
- Bennett, Daniel. 2014. "Serving God by Shaping Law: Religious Legal Advocacy in the United States." In *Mediating Religion and Government: Political Institutions and the Policy Process*. Elizabeth Oldmixon and Kevin den Dulk, eds. New York: Palgrave Macmillan. 83-108. (M)

## The Court & Executives

Thursday September 21– The President & The Court

- Miller: Chapter 11
- Wohlfarth, Patrick C. 2009. "The Tenth Justice? Consequences of Politicization in the Solicitor General's Office." *Journal of Politics*. 71(1):224-237.

Tuesday September 26– State Attorneys General

- Provost, Colin. 2011. "When to Befriend the Court? Examining State *Amici Curiae* Participation Before the U.S. Supreme Court." *State Politics & Policy Quarterly*. 11:4-27. (M)
- Nolette, Paul. 2014. "State Litigation During the Obama Administration: Diverging Agendas in an Era of Polarized Politics." *Publius: The Journal of Federalism*. 44(3): 451-474. (M)

## The Court, Congress, & the Bureaucracy

Thursday September 30– Congress & The Court

- Miller: Chapter 10
- Ringsmuth, Eve and Timothy R. Johnson. 2013. "Supreme Court Oral Arguments and Institutional Maintenance." *American Politics Research*. 41:651-673. (M)

Tuesday October 3– The Court & The Bureaucracy

- Miller: Chapter 12
- Johnson, Gbemende. 2014. "Judicial Deference and Executive Control Over Administrative Agencies." *State Politics & Policy Quarterly*. 14(2):142-164. (M)

Thursday October 5– **EXAM ONE**

- *No class: "Take home" exam. Due to me via Turnitin.com by 11:59pm*



## From Petition to Decision

### Tuesday October 10– Getting to the Court

- Black, Ryan C. and Ryan J. Owens. 2012. “Supreme Court Agenda Setting: Policy Uncertainty and Legal Considerations.” in *New Directions in Judicial Politics*. ed: Kevin T. McGuire. Routledge: New York. (M)
- Goelzhauser, Greg and Nicole Vouvalis. 2013. “State Coordinating Institutions and Agenda Setting on the U.S. Supreme Court.” *American Politics Research*. 41(5):819-838. (M)

### Thursday October 12– Oral Arguments

- Johnson, Timothy R. 2001. “Information, Oral Arguments, and Supreme Court Decision-Making.” *American Politics Research*. 29(4):331-351. (M)
- Ringsmuth, Eve, Amanda C. Bryan, and Timothy R. Johnson. 2013. “Voting Fluidity and Oral Arguments on the U.S. Supreme Court.” *Political Research Quarterly*. 66:429-440. (M)

### Thursday October 17– Leadership

- Crowe, Justin. 2007. “The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft.” *Journal of Politics*. 69:73-87. (M)
- Maltzman, Forrest, and Paul J. Wahlbeck. 2004. “A Conditional Model of Opinion Assignment on the Supreme Court.” *Political Research Quarterly*. 57:551-563. (M)

### Thursday October 19– Opinion Writing

- Clark, Tom S. 2012. “Bargaining and Opinion Writing on the U.S. Supreme Court.” in *New Directions in Judicial Politics*. ed: Kevin T. McGuire. Routledge: New York. (M)
- Corley, Pamela C. 2008. “The Supreme Court and Opinion Content.” *Political Research Quarterly*. 61:468-478. (M)

### Tuesday October 24– Opinion Writing (cont.)

- Wahlbeck, Paul J., James F. Spriggs, and Lee Sigelman. 2002. “Ghostwriters on the Court? A Stylistic Analysis of U.S. Supreme Court Opinion Drafts.” *American Politics Research*. 30(2):166-192. (M)
- Spriggs, James F. and Paul J. Wahlbeck. 1997. “Amicus Curiae and the Role of Information at the Supreme Court.” *Political Research Quarterly*. 50:365-386. (M)

## State Courts

### Thursday October 26– State Court Selection Mechanisms

- Kritzer, Herbert M. 2015. *Justices on the Ballot: Continuity and Change in State Supreme Court Elections*. Cambridge University Press: New York. Chapter 2. (M)
- Hall, Melinda Gann. 2014. “Representation in State Supreme Courts: Evidence from the Terminal Term.” *Political Research Quarterly*. 67:335-346. (M)

## Tuesday October 31– State Supreme Court Decision Making

- Roch, Christine H. and Robert M. Howard. 2008. “State Policy Innovation in Perspective: Courts, Legislatures, and Education Finance Reform.” *Political Research Quarterly*. 61(2):333-344. (M)
- Hinkle, Rachael K. and Michael J. Nelson. 2016. “The Transmission of Legal Precedent Among State Supreme Courts in the Twenty-First Century.” *State Politics & Policy Quarterly*. 16(4):391-410. (M)

**The Lower Federal Courts & Comparative Courts**

## Thursday November 2– The Federal Courts of Appeal

- Martinek, Wendy L. 2009. “Appellate Workhorses of the Federal Judiciary: The U.S. Courts of Appeals.” in *Exploring Judicial Politics*. Mark C. Miller ed. Oxford University Press: New York. (M)
- Hazelton, Morgan, Rachael K. Hinkle, and Jee Seon Jeon. 2016. “Sound the Alarm? Judicial Decisions Regarding Publication and Dissent.” *American Politics Research*. 44(4):649-681. (M)

## Tuesday November 7– The Federal District Courts

- Barnes, Jeb. 2009. “U.S. District Courts, Litigation, and the Policy-Making Process.” in *Exploring Judicial Politics*. Mark C. Miller ed. Oxford University Press: New York. (M)
- Boyd, Christina L. 2015. “Opinion Writing in the Federal District Courts.” *Justice System Journal*. 36(3):254-273. (M)

## Thursday November 9– Comparative Courts

- Miller: Chapter 12
- Helmke, Gretchen. 2002. “The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy.” *American Political Science Review*. 96(2):291-303. (M)

**Gender & Courts**

## Tuesday November 14– Gender, the U.S. Courts, and the Canadian Courts

- Sarver, Tammy A., Erin B. Kaheny, and John J. Szmer. 2007-2008. “The Attorney Gender Gap in U.S. Supreme Court Litigation.” *Judicature*. 91:238-250. (M)
- Kaheny, Erin B., John J. Szmer, and Tammy A. Sarver. 2011. “Women Lawyers Before the Supreme Court of Canada.” *Canadian Journal of Political Science*. 44(1):83-109. (M)

## Thursday November 16– Gender &amp; Judicial Decision-Making

- Haire, Susan B. and Laura P. Moyer. 2015. *Diversity Matters: Judicial Policy Making in the U.S. Courts of Appeals*. University of Virginia Press: Charlottesville, VA. Chapter 2 (M)
- Szmer, John, Robert K. Christensen, and Erin B. Kaheny. 2015. "Gender, Race, and Dissensus on State Supreme Courts." *Social Science Quarterly*. 96(2):553-575. (M)

Tuesday November 21– **NO CLASS: FALL RECESS**

Thursday November 23– **NO CLASS: FALL RECESS**

## The Supreme Court & The Public

Tuesday November 28– Public Opinion

- Miller: Chapter 9 (*just pages 203-213*)
- Caldeira, Gregory A. 1987. "Public Opinion and the U.S. Supreme Court: FDR's Court-Packing Plan." *American Political Science Review*. 81(4):1139-1153. (M)
- Bodderly, Scott S. and Jeff Yates. 2014. "Do Policy Messengers Matter? Majority Opinion Writers as Policy Cues in Public Agreement with Supreme Court Decisions." *Political Research Quarterly*. 67:851-863. (M)

## Current Research in Judicial Behavior

Thursday November 30– Contagion Effects

- Sen, Maya and Adam N. Glynn. 2015. "Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?" *American Journal of Political Science*. 59(1):37-54. (M)
- Kromphardt, Christopher D. 2017 "Evaluating the Effect of Law Clerk Gender on Voting at the United States Supreme Court." *Justice System Journal*. 38(2):183-201. (M)

Tuesday December 5– Gender Norms and the Legal System

- Gordon, Elizabeth Ellen. 2016. "Female Candidates, Sociopolitical Subculture, and State Attorneys General Elections." *Justice System Journal*. 37(1):63-71. (M).
- Gleason, Shane A., Jennifer J. Jones, and Jessica Rae McBean. 2017. "Gender Performance in Party Briefs." *Washington University Journal of Law & Policy*. *forthcoming*. (M)

Thursday December 7– **CATCH-UP DAY**

- *Class may or may not meet.*

**Final Exam: Thursday December 14: 10:00am to 12:00pm in our normal classroom**