

AMERICAN JUDICIAL BEHAVIOR

PL SC 473
Spring 2016
TR 4:15-5:30pm
173 Willard Bldg.

Michael Nelson
mjn15@psu.edu
Office: Pond Lab 232
Office Hours: 1-2pm T/R
And By Appointment

COURSE DESCRIPTION

Judicial decisions affect everyone in America, and opinions abound about the proper role of the judiciary in a democratic polity. This class examines judicial decisionmaking from both normative and empirical perspectives: how *do* judges make decisions, how *should* judges make decisions, and how might we make sure that the way judges *do* make decisions is in line with the way judges *should* make decisions? In this class, we'll explore how law provides both opportunities for and constraints on judges, how judges are affected by public opinion and other branches of government, and how judges are affected by interest groups and litigants in particular cases. Throughout the course, we will discuss important normative debates about the appropriate role of judges and to survey the social scientific literature on how judges make decisions.

OBJECTIVES

This course has three major objectives related to your knowledge of judicial politics in the United States.

COURSE MATERIALS

The main reading material for the course will come from a book titled *Judicial Decisionmaking* by Barry Friedman, Andrew D. Martin, Tom Clark, Maggie Lemos, and Allison Orr Larson that is available in coursepack form at the university bookstore. Other supplemental readings will be posted on ANGEL

COURSE REQUIREMENTS

The requirements for this course involve both (1) the completion of reading and writing assignments outside of our class meetings and (2) your active and informed contributions to our course discussions when we meet. Our class time will be divided among lectures and discussion.

EXAMS (Midterm: 20% each) You will sit for a midterm and final exam. The exam material will come from lectures, class discussion, and from the reading material directly. I will discuss the format of each exam in class and will hold additional office hours prior to each exam.

MEMORANDUM (15%). It is July 2017, and Justice Anthony Kennedy has announced his retirement from the U.S. Supreme Court. You are a staffer to President [Clinton/Sanders/Trump/Cruz/etc.—you pick] tasked with advising the president on his/her nominee. You will prepare a memorandum

to the president that both (a) recommends and (b) vets a nominee to the Supreme Court. I will provide you with more information about my expectations for this memorandum.

TERM PAPER (10% Checkpoints; 25% Paper). You will write a detailed historical analysis of a landmark U.S. Supreme Court case. This 12-15 page term paper will explain the Court's decision in the case. In particular, your paper should answer two questions: (1) Why did the Court decide as it did in this case? (2) Why is this case a "landmark" one? Your paper should provide a thorough discussion of how the case came to the Court, the major issues involved in the case, the votes and opinions in the case, relevant political factors (see below), and the impact of the decision on American life. This paper will require a significant amount of outside research. To this end, you will submit a series of checkpoint assignments:

- CHECKPOINT #1: Case Brief. You will submit a case brief based on a handout that I provide to you. A case brief is a short summary of a case that provides information about the history of a case, the facts of the case, the legal question(s) presented in the case, and the Court's decision in the case. This case brief must be *exactly* one page and will enable me to approve your case selection.
- CHECKPOINT #2: Jurisprudential Analysis. You will submit a draft of the portion of your paper (approximately 5 pages) that discusses the Supreme Court's decision in the case. I expect that this portion of your analysis will discuss both the ideological leanings of the justices on the Court as well as relevant legal factors.
- CHECKPOINT #3: Political Analysis. You will submit a draft of the portion of your paper (approximately 5 pages) that discusses potential political influences on the justices' decisions. Some potential areas you might explore include public opinion, the position of the Solicitor General, relevant congressional action, the number and the positions of *amici* and interest groups.
- CHECKPOINT #4: Peer Review. You will provide feedback to two of your peers about their project at several key points throughout the semester. Your peers' evaluation of the seriousness, promptness, and helpfulness of your comments will account for 5% of your grade.

This paper requires substantial legal and historical research. I expect that you will read the Court's opinion in the case as well as the lower court decision(s) in these cases. Additional sources will include contemporary and historical news accounts, books by historians, legal scholars, and political scientists, and scholarly articles written by historians, legal scholars, and political scientists. 15 sources is a bare minimum.

PARTICIPATION (10%). *This is a seminar. I expect you to come to class, to be prepared when you arrive, and to participate actively in discussion.* The final portion of your grade is based on your ability and willingness to contribute to our class. Everyone's experience in this course is enhanced by regular attendance and active participation; conversely, everyone's experience suffers if individuals do not participate. Remember that a sincere question often adds as much (if not more) to our understanding of the course material as an explanation of the week's readings. So, don't be afraid to speak up! *I think of*

your seminar participation as akin to a semester-long oral exam. That means you need to come to class consistently, prepared, and ready to engage in discussion.

Please remember that attending class and sitting silently is not, by definition, “participation.” Also, please note that I do not penalize you directly for missing class (though multiple absences will adversely affect your grade through a lower participation score).

SUMMARY OF DEADLINES AND ASSESSMENT

<i>Assignment</i>	<i>Due Date</i>
Checkpoint #1	Feb. 4
Checkpoint #2	Feb. 23
Midterm Exam	Mar. 3
Memorandum	Mar. 17
Checkpoint #3	Mar. 29
Checkpoint #4	Apr. 12
Final Paper	April 28
Final Exam	Finals Week

EXPECTATIONS/PROCEDURES

RESPECT. In this course, we are all engaged in the endeavor of building a stronger understanding of the U.S. Supreme Court and its decisions. Everyone comes to this course with a different background in the subject (particularly where statistics are concerned). It is important that we all treat each other with the utmost respect.

OFFICE HOURS. Please come. I’m here to help. If my office hours conflict with another commitment, please e-mail me to find a time that works for both of us to meet. Amanda Parks, a graduate student in political science, will hold laboratory help sessions throughout the semester. More information on these sessions will be discussed in class.

WORKING TOGETHER. I encourage you to discuss our class material outside of practice, particularly as you study for examinations. There is no better way to master this material than to work together on it.

LATE ASSIGNMENTS. Assignments not submitted by the assigned due date and time are late. Late submissions will be accepted; however, they will be subject to a one-half grade (5%) per day (including weekends) late penalty. All assignments must be completed in order to pass this course. I do not accept assignments over e-mail.

EXTENSIONS. Extensions will be granted in only the most severe circumstances. If you foresee the need for an extension, one needs to be requested and granted at least 24 hours before the due date. No one is entitled to an extension; they will be offered only at my discretion.

ACADEMIC DISHONESTY. I take violations of the University's academic dishonesty policy very seriously; it is printed on the next page. Please review the policy and let me know if you have any questions.

CHANGES HAPPEN. This syllabus is a best estimate about how our class will proceed. We have *no idea* what the Supreme Court is going to do with respect to our course material this semester. If they do something, *we're going to talk about it—that is the beauty of taking this class this semester*. Any changes will be discussed in class.

GRADING SCALE. The course will follow a standard grading scale:

93-100	A	80-82	B-
90-92	A-	77-79	C+
87-89	B+	70-76	C
83-86	B	60-69	D

REGARDING GRADES. I do not *give* grades. You *earn* grades. It is essential that you are proactive regarding your performance in this course; *do not wait* until grades are posted and then ask how your grade could be improved. At that point, barring a mathematical error on my part, it cannot be. If, at any point, you are unsure of your current standing in the course, please come to my office hours. I may (or may not) offer extra credit assignments to the entire class during the semester. I am sometimes asked about extra-credit or additional assignments after the final grades have been tallied by students who are unhappy with their grades. I will not offer such assignments to the class or individual students.

ACADEMIC INTEGRITY. Penn State defines academic integrity as the pursuit of scholarly activity in an open, honest and responsible manner. 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 (Faculty Senate Policy 49-20). Dishonesty of any kind will not be tolerated in this course. Dishonesty includes, but is not limited to, cheating, plagiarizing, fabricating information or citations, facilitating acts of academic dishonesty by others, having unauthorized possession of examinations, submitting work of another person or work previously used without informing the instructor, or tampering with the academic work of other students. Students who are found to be dishonest will receive academic sanctions and will be reported to the University's Judicial Affairs office for possible further disciplinary sanctions

ACADEMIC DISHONESTY. The Department of Political Science, along with the College of the Liberal Arts and the University, takes violations of academic dishonesty seriously. Observing basic honesty in one's work, words, ideas, and actions is a principle to which all members of the community are required to subscribe. All course work by students is to be done on an individual basis unless an instructor clearly states that an alternative is acceptable. Any reference materials

used in the preparation of any assignment must be explicitly cited. Students uncertain about proper citation are responsible for checking with their instructor. In an examination setting, unless the instructor gives explicit prior instructions to the contrary, whether the examination is in class or take home, violations of academic integrity shall consist but are not limited to any attempt to receive assistance from written or printed aids, or from any person or papers or electronic devices, or of any attempt to give assistance, whether the one so doing has completed his or her own work or not. Lying to the instructor or purposely misleading any Penn State administrator shall also constitute a violation of academic integrity. In cases of any violation of academic integrity it is the policy of the Department of Political Science to follow procedures established by the College of the Liberal Arts. More information on academic integrity and procedures followed for violation can be found at: <http://laus.la.psu.edu/current-students/academics/academic-integrity/college-policies>

NOTE TO STUDENTS WITH DISABILITIES. Penn State welcomes students with disabilities into the University's educational programs. If you have a disability-related need for reasonable academic adjustments in this course, contact the Office for Disability Services (ODS) at 814-863-1807 (V/TTY). For further information regarding ODS, please visit the Office for Disability Services Web site at <http://equity.psu.edu/ods/>

Instructors should be notified as early in the semester as possible regarding the need for reasonable accommodations.

SCHEDULE

Below, you'll find a list of all class meetings, the topic we'll discuss, and the reading assignment. You should complete the reading assignment before you come to class and bring any questions that you have with you (along with a print or virtual copy of the reading) to our class meetings. Given the Supreme Court's intense interest in the topics that form the basis for this course during this semester, it is extremely likely that this schedule will change.

Week 1 (1/12)

Tuesday: Introduction to Class.

- Reading: None

Thursday: How does the U.S. judicial system work?

- Administrative Office of the U.S. Courts, *Understanding the Federal Courts* [Skim]
- Kerr, "How to Read a Legal Opinion." [Recommended]

Week 2 (1/19)

Tuesday: Introduction: *Brown v. Board of Education*

- JDM: Ch. 1 [pp. 1-30]

Thursday: More on *Brown*

- JDM: Ch. 1 [pp. 30-74]

Week 3 (1/26)

Tuesday: Does Law Matter?

- JDM: Ch. 2 [pp. 2-20]

Thursday: How and When Does Law Matter ?

- JDM: Ch. 2 [pp. 20-41]

Week 4 (2/2)

Tuesday: Reading Social Science Research

- JDM: Ch. 3 [pp. 1-61]

Thursday: Reading Social Science Research

- Reading TBD
- **Checkpoint 1 Due**

Week 5 (2/9)

Tuesday: Identity and Background

- JDM: Ch. 3 [pp. 61-97]

Thursday: Identity and Background

- Sen and Glynn
- Boyd et al.

Week 6 (2/16)

Tuesday: What makes a good judge?

- JDM: Ch. 4 [pp. 1-48]

Thursday: Judicial Independence

- JDM: Ch. 4 [pp. 48-89]

Week 7 (2/23)

Tuesday: Judicial Elections

- JDM: Ch. 4 [89-139]
- **Checkpoint 2 Due**

Thursday: Should we stop elections?

- JDM: Ch. 4 [139-154]

Week 8 (3/1)

Tuesday: Improving Judicial Elections; Exam Review

- JDM: Ch. 4 [pp. 154-177]

Thursday: **Midterm Exam**

Week 9 (3/15)

Tuesday: Litigants

- JDM: Ch. 5 [pp. 1-48]

Thursday: Lawyers and Interest Groups

- JDM: Ch. 5 [pp. 48-88]
- **Memo Due**

Week 10 (3/22)

Tuesday: Deciding to Decide

- JDM: Ch. 5 [pp. 88-101]

Tuesday: Inside the Supreme Court

- Selection from Maltzman, Spriggs, and Wahlbeck, *Crafting Law on the Supreme Court*
- Yarbrough, Tinsley E. 2008. "The Chambers." *Harry A Blackmun: The Outsider Justice* New York: Oxford University Press, 141-169.

Week 11 (3/29)

Tuesday: Strategy Inside the Supreme Court

- Selection from Epstein and Knight, *The Choices Justices Make*
- **Checkpoint 3 Due**

Thursday: Panel Effects and Dissent

- Reading TBD

Week 12 (4/5)

Tuesday: The Separation of Powers

- Eskridge 1991

Thursday: Peer Review Workshop

- Read your classmates' papers

Week 13 (4/12)

Tuesday: The Separation of Powers

- Dahl 1957
- Clark 2009
- **Checkpoint 4 Due**

Thursday: Lower Courts

- Reading TBA

Week 14 (4/19)

Tuesday: Public Opinion

- JDM: Ch. 10 [pp. 1-37]

Thursday: Public Opinion

- JDM: Ch. 10 [pp. 37-90]

Week 15 (4/26)

Tuesday: Judicial Impact

- Selection from Rosenberg, *The Hollow Hope*

Thursday: Wrap-Up

- **Final Paper Due**