

Law and Courts Newsletter

DECISION MAKING IN THE SHADOWS: A LOOK AT SUPREME COURT DECISIONS ON STAYS

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In a 2015 article, legal scholar William Baude highlighted what he called the Supreme Court's "shadow docket," the Court's orders and summary decisions that receive far less notice than decisions reached after oral argument. Baude probed one component of the shadow docket, summary reversals of lower-court decisions. More recently, legal scholar Stephen Vladeck (2019) focused on another slice of the shadow docket, the Court's responses to federal government requests for "emergency or extraordinary relief" in the form of petitions for certiorari before lower courts reached judgments in cases, requests for extraordinary writs, and applications for the granting or vacating of stays. Baude and Vladeck both underlined the significance of the forms of Court action they examined. Because of their work and the visibility of some individual cases in the past few years, other observers of the Court have discussed aspects of the shadow docket (Feldman 2020; Liptak 2020; Barnes 2020).



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Political scientists have produced a substantial and impressive body of research on one component of the shadow docket, the Court's decisions about whether to grant certiorari. Some research on decision making also takes into account summary decisions on the merits. I want to call attention to another component of the shadow docket, the Court's decisions on application for stays and applications to vacate stays. Increasingly, some of these decisions have a significant impact on policy or politics. I also think that examining how justices respond to these applications can provide a useful perspective on the role of ideological and partisan considerations in decision making by the Court.

Litigants can come to the Court with applications for stays of action by lower courts or other government agencies or for vacating of stays that lower court have issued (see Shapiro et al. 2013, 872-898). These applications ordinarily go to the relevant circuit justice and can be referred to the Court as a whole, as they often are. Applications relating to stays arise in several different situations. Perhaps the most important distinction is between applications that accompany petitions for certiorari in the Court and those that arise at earlier stages in litigation. Applications in that second category, which ask the Court to reach down into the lower courts, have become more common and more controversial in recent years (Vladeck 2019).

My interest in stays was piqued by some of the Court's responses to what I will call stay cases in the 2018 and 2019 terms in comparison with its decisions on the merits. In those terms the Court's decisions on the merits verified that it was divided into two ideological blocs that were distinct from each other in overall voting tendencies. Yet the presence of a conservative majority did not have as much impact on the Court's outputs as it might have, largely because Chief Justice Roberts and Justices Gorsuch and Kavanaugh each joined the Court's liberals in some decisions.

Indeed, in the cases with the highest partisan stakes--those that involved major programs of the Trump administration or disputes over election administration--the Court had a quite mixed record. In the last week of the 2018 term, the Court's ruling that federal courts could not address partisan gerrymandering (*Rucho v. Common Cause* 2019) was balanced by its ruling that the Commerce Department had acted illegally in its effort to add a citizenship question to the 2020 census (*Department of Commerce v. New York* 2019). The rulings in July 2020 on subpoenas for President Trump's financial records were mixed in themselves, favoring the president in the short run but perhaps not in the long run (*Trump v. Vance*, *Trump v. Mazars USA*). And the Court blocked the administration from ending the DACA program for immigrants, at least temporarily (*Department of Homeland Security v. Regents of the University of California* 2020). Notably, Chief Justice Roberts joined the liberal justices in 5-4 decisions in the census and DACA cases. He was joined in the majority by Gorsuch and Kavanaugh in the financial records cases, though those two justices did not sign on to his majority opinion in *Vance*.

Yet there was some evidence of a different pattern in the Court's responses to stay applications. In the 2018 and 2019 terms, the Court gave favorable responses to a substantial number of Trump administration requests to issue or vacate stays. In several instances, the effect was to allow administration policy initiatives to go forward, on issues such as building of a border wall, transgender status and military service, and execution of federal prisoners. And in 2020 the Court stayed decisions by lower federal courts relating to the administration of elections in four states, and in each instance the Court took positions that were perceived as favorable to Republican electoral interests--or, in Wisconsin, the electoral prospects of a conservative candidate for the state supreme court (*Republican National Committee v. Democratic National Committee*).^[1] All four rulings were potentially consequential, especially the ruling that allowed Florida to prohibit people with felony convictions from voting if they owed fines or fees (*Raysor v. DeSantis*).

In both the Trump policy cases and the election cases, most of the Court's actions evoked dissents from the Court's liberal justices. In this arena, the Court seemed to be sharply divided in both ideological and partisan terms, and its conservative bloc appeared to be united most of the time even in decisions that garnered dissents. In turn, this pattern raises the question of whether at least some justices (including, perhaps, the chief justice) feel less constrained in following their personal preferences when they are operating in the shadows.

An Exploratory Study

To probe this question and to get a better sense of stay cases, I undertook an exploratory study of stay cases in the 2013-2019 terms. The study was limited to the 117 cases in which one or more justices announced dissents from the Court's ruling, cases that are relatively easy to locate.^[2]

^[1]In a fifth case, the Court addressed a state's rules for signatures on initiative petitions, a ruling that was not directly related to Republican and Democratic interests.

^[2]The Court's reporting of stay cases treats terms as beginning on the first Monday of October. My study terminated at the end of July 2020; thus it leaves out any Court responses to stay cases in the last two months of the 2019 term.

Decisions on stays in which any justice dissented are reported in the Court's Journal, available at its website. The great majority of these decisions are listed in the table of contents of the Journal, under Applications. I found others with a search of the Journal for "would" and "dissent." With a few exceptions, opinions that justices write in stay cases that are more than a sentence or two long (including some that concur with the Court's action) are reported in Opinions Related to Orders at the Court's website. The Court's action in all stay cases can be ascertained by searching docket numbers with an A (for instance, 19A238). This is a slow process because there are more than a thousand Application cases each term, of which the overwhelming majority (at least in the sets of cases I sampled) are applications for extension of the deadline to file certiorari petitions.

When the Court addressed related cases, I counted them separately if they were reported in separate orders. Similarly, if the same case resulted in multiple orders at different times, each was counted separately. One case was counted twice, because there were dissents from a mixed decision in both directions.

For periods in which justices' papers are not yet available, analysis of stay cases has the same limitation as analysis of certiorari decisions: we know how the justices voted only when they announce their positions for the record or when the announcement of four dissenting votes tells us how the other five justices voted. However, the percentage of cases in which dissents are noted is far higher in stay cases than in certiorari decisions. My sampling of cases on the Court's Application docket, where the stay cases reside, suggests that as many as one-quarter or one-third of decisions of the full Court on stays are accompanied by announced dissenting votes.^[3] Still, that set of cases is a highly unrepresentative sample of all stay cases before the Court, though it has the accompanying advantage that the cases that draw public dissents are of particular interest.

Table 1
Distribution of Cases With Announced Dissents,
2013-2019 Terms, by Several Attributes

Term	N	Subject	N	# of Dissenters	%	Opinion	%
2013	14	Execution	57	1	17.1	Substantial ^c	34.2
2014	24	Election rules	17	2	24.8	Short	5.1
2015	14	Immigration	15	3	17.9	None	60.7
2016	15	Sexual orientation	9	4	40.2		
2017	15	Reproductive rights	6				
2018	21	Environment	6 ^b				
2019	14 ^a	Other	7				

^aThe 2019 term includes only October 2019 through July 2020.

^bFive of the environmental cases arose from the same dispute. Two of the immigration cases also had environmental elements.

^cOpinions were treated as substantial if they were reported in "Opinions" on the Court's website. Most of the other opinions, classified as short, were quite brief.

Table 2 reports patterns of announced dissents by ideological groupings on the Court and by individual justices. There were no cases in which both liberal and conservative justices dissented. In three-quarters of the cases, the dissents came from the Court's liberals. The rates of dissent for individual justices in the two ideological groupings of justices are reported as proportions of all cases with dissent during a justice's tenure and as proportions of cases with dissent by a justice's ideological group during that tenure.

^[3]As in certiorari decisions, justices may dissent from decisions on stays without making those dissents public--though the frequency of public dissents indicates that this may not be a common practice. In any event, when I present figures on patterns of dissents, it is important to keep in mind that these are only the announced dissents.

Table 2
Rates of Announced Dissents by Ideological Groups and Individual Justices

Liberals (74.4% of cases w/ dissents)			Conservatives (25.6% of cases w/ dissents)		
Justice	% of all cases	% of cases w/ lib. dissents	Justice	% of all cases ^a	% of cases w/ cons. dissents ^a
Sotomayor	67.5	90.8	Thomas	25.6	100.0
Ginsburg	53.8	72.4	Scalia ^b	19.6	100.0
Breyer	47.9	64.4	Gorsuch ^b	23.0	87.5
Kagan	41.9	56.3	Alito	17.1	66.7
			Kavanaugh	8.6	33.3
			Roberts	3.4	13.3
			Kennedy	2.4	9.5

^a For the justices who served during only part of the study period, the percentages are of cases that the Court decided during their tenure.

^b The ordering of Scalia and Gorsuch differs between the two columns because of the differences in the distribution of dissents by liberals and conservatives during their tenure.

In the cases with dissents by liberals, the ordering of the justices is consistent with their pattern of votes on the merits, though Sotomayor stands apart to a greater extent in the stay votes. On the conservative side, the very high proportions for Thomas and Scalia and the low proportions for Roberts and Kennedy are also consistent with their ideological positions in decisions on the merits. Alito's proportion is perhaps lower than might be expected; Gorsuch's proportion is certainly higher than might be expected. But comparisons among conservative justices who served for different portions of the 2013-2019 period should be made with caution, because the sets of cases they faced are not entirely comparable.

Indeed, Alito's rate of dissent was considerably higher during the period in which Gorsuch sat on the Court, increasing from 50 percent before Gorsuch's arrival to 81 percent afterwards. Even with small numbers of cases with conservative dissents in each period (14 in the first period, 16 in the second), that change is noteworthy. In all likelihood, it reflected growth in the numbers of cases with high ideological or partisan stakes. Roberts' proportion also increased, from 6 percent to 21 percent. Of course, there was no room for Thomas's proportion to increase. But it is noteworthy that Gorsuch's proportion was even higher than Alito's during that second period, and the gap of more than 65 percentage points between him and Roberts stands in strong contrast with their similar voting records in decisions on the merits.

The cases involving stays of execution show somewhat different patterns of dissent from those involving other issues. Most important, the dissents were by liberals in 89 percent of the execution cases, compared with 60 percent for other cases.

The high proportion for execution cases reflects the general support of the Court's conservatives for use of the death penalty. The percentage of liberal dissents in non-execution cases is a bit higher since Gorsuch joined the Court during the 2017 term, at 64 percent.

In the cases in which liberal justices dissented against rulings that allowed executions, 45 percent of the time all four liberals joined in the dissent. In 31 percent of the cases only a single justice dissented, and in ten of those 16 cases the lone dissenter was Sotomayor. Kagan had the lowest rate of dissents in execution cases among the liberal justices.

The non-execution cases in which liberal justices were in the majority largely reflected what might be called defections by Chief Justice Roberts (who dissented in only two of the 24 non-execution cases that had dissents by any conservatives) and Justice Kennedy (one dissent in 16 of those cases). Of course, the majority of this subset of cases had dissents by liberals, a result guaranteed by the absence of defections by any conservatives in these cases. In half the non-execution cases with liberal dissents, all four liberal justices dissented. Altogether, in 70 percent of the non-execution cases that elicited dissents, the Court's four liberals were united either in dissent or as part of the majority. Because there were so many stay of execution cases with dissents by some but not all the Court's liberals, the equivalent figure for those cases was 51 percent. Because conservative justices could not be united in dissent except during the period in 2016-2017 when there were only four conservative justices,^[4] their rates of unity were only slightly higher than the rates in which they were in the majority: 62 percent in non-execution cases, 91 percent in execution cases.

Two sets of cases are of particular interest. First are those in which the solicitor general asked the Court to stay action by a lower federal court or to vacate such a stay. Vladeck (2019) focused on those cases, showing that the Trump administration sought that intervention and other special forms of action by the Court far more often than the George W. Bush and Obama administrations. In many of the stay cases, the administration sought to overcome nationwide injunctions issued by district courts to block the operation of its policies in fields such as immigration.

All but one of the requests for stays by the federal government in the 2013-2019 terms were brought by the Trump administration, so I will focus on those cases. Among the cases brought by the federal government, there were dissents in all but two of the sixteen stay decisions by the full Court in the 2016-2018 terms that Vladeck cited. There were nine such cases with dissents in the 2019 term; it appears that these cases constituted the great majority of the stay cases brought by the solicitor general and ruled on by the Court.

^[4]As in decisions on the merits, a tie vote means that the Court does not disturb a lower-court judgment--for stays, denying the application brought to the Court. But unlike the practice for decisions on the merits, justices sometimes announce dissents when there is a tie vote in a stay case.

In the 22 cases with dissents in those four terms, the Court ruled fully in favor of the government in 14, largely in favor of the government in four others, and against the government in four. There were conservative dissents in eight cases, because each of the four mixed decisions evoked dissents from conservatives who wanted the Court to rule more fully for the government. (In those cases, no liberals dissented on the other side.) Vladeck raised questions about the desirability of the Court's willingness to grant the government's applications in cases involving stays and other forms of relief at preliminary stages of cases. In *Wolf v. Cook County* (2020), Justice Sotomayor argued strongly that the Court was unduly favorable to the government's requests for stays.

Chief Justice Roberts did not dissent in any of the eight government cases with conservative dissents, and in two his vote allowed a 5-4 liberal victory. In five of the other six cases with conservative dissents, the vote was 6-3, and in four of those five cases (three with Kennedy on the Court, the other with Kavanaugh), the dissenters were Thomas, Alito, and Gorsuch. In ten of the 14 cases with liberal dissents, all four liberals cast dissenting votes. In three others, Sotomayor and Ginsburg dissented; in the other case, Sotomayor dissented alone.

Adding all this together, Roberts was on the liberal side of a 5-4 split in two cases and on the conservative side of a 5-4 split in ten cases. He was on the liberal side of the Court's divide in eight of the 22 cases brought by the Trump administration, but in four of those cases he as well as the liberals gave the government part of what it wanted. Kavanaugh was on the liberal side in only three of 16 cases, and Gorsuch in none of the 22 cases.^[5] Among the liberal justices, Kagan and Breyer had the most balanced records of any justice, but even they were on the pro-government side of the Court's divide in only four of 22 cases--although, again, their positions in four others were partly favorable to the administration.

The other set of cases of particular interest is those involving election administration. Nine of the 17 cases^[6] in this category arose from challenges to state rules for voter eligibility or the availability of voting mechanisms such as absentee ballots. Four others involved the drawing of legislative districts. Eight of the cases raised issues of racial discrimination, had civil rights groups as parties, or both. The cases involving discrimination issues can be regarded as ideological, and most of the other cases were also ideological if widening access to the ballot is regarded as a liberal position under all circumstances. At the same time, all but two of the cases had a clear partisan element, in that the state laws that had been challenged in those cases were generally regarded as favorable to the Republican party.

^[5] There were actually 16 cases, but one of those cases had dissents on opposite sides by conservative and liberal justices, so it was counted twice.

^[6] All of the cases in the 2016 term came after Gorsuch joined the Court in April 2017.

In 13 of the 17 election cases, the dissents came from liberal justices. In six of those cases, all the liberal justices joined in dissent. In five others, Ginsburg and Sotomayor were the lone dissenters. There was one case with dissents by four conservative justices. That case occurred in the 2016-2017 period when the Court was shorthanded, and the conservatives lost on a 4-4 vote. This was the only election case in which Chief Justice Roberts dissented. Thus there were no cases in which his vote resulted in a liberal outcome, but there were five cases in which he provided one of the five votes for an outcome favored by the conservative justices. Roberts voted with his fellow conservatives in all six election cases with dissents in the 2019 term, including two states' limits on absentee voting and Florida's denial of voting rights to ex-felons who owed fines or fees.

Altogether, leaving aside the possibility that some justices dissented privately, in six of the 17 cases the justices divided fully along partisan lines, and altogether it appears that 85 percent of the justices' votes in these cases supported the perceived interest of their parties. (This figure leaves aside the two cases that did not affect the parties' interests directly.)

Discussion

On the theoretical question that motivated this study, the answer is mixed. For the most part, the patterns of announced dissenting votes by the justices are consistent with their votes on the merits. But there are some differences as well.

For Chief Justice Roberts, the evidence can be interpreted in different ways. His very low rate of dissent suggests the same relative moderation that appears in his record in merits decisions. And in the 2018-2019 terms, when he could be regarded as the pivotal justice, there were three cases in which he joined the four liberals in stay cases and thereby created a 5-4 liberal majority. But there were also 15 cases in those terms in which the Court divided perfectly along ideological lines, with Roberts joining his conservative colleagues. That disparity suggests that when his vote counted, Roberts leaned heavily in a conservative direction. And the 15 decisions in which he sided with his fellow conservatives against the four liberal justices included several with substantial ideological or political stakes.

For Justice Gorsuch, the contrast between decisions on the merits and decisions on stays is more striking. In decisions on the merits, his balance of conservative and liberal votes has not differed a great deal from that of Roberts, and his record has been quite different from that of Justices Thomas and Alito. But in stay cases in which any justice dissented, his record has been far more conservative--a little more conservative than Justice Alito's record--and only Justice Thomas outdistances him in that respect.

Does this mean that Gorsuch, and Roberts to a lesser degree, are more hard-line conservatives when they reach decisions in the shadows? The limitations of this study caution against reaching that conclusion. We do not know about dissents that justices cast but did not announce, and I did not investigate cases with no recorded dissents.

The frequency with which justices announce dissents in stay cases suggests--though it certainly does not prove--that, by and large, justices who disagree with the Court's ruling in the current era make those disagreements public. If so, the decisions on stays that appear to be unanimous generally *are* unanimous, and a study that encompassed all stay decisions would provide a much fuller picture than this exploratory study can offer.

Even so, it is clear that ideological and partisan divisions on the Court are manifested in the justices' votes in this arena. The Court's rulings on stay cases are consequential, especially when they are effectively the final word on a legal dispute; the justices often make important policy choices when they decide about issuing or maintaining stays. That has become especially true during the Trump administration, and it is likely to remain true in a second Trump term or in a Biden administration because applications for stays have become a standard mechanism to gain an advantage in politics or policy. Indeed, it would not be surprising if there were several additional battles in the Court over stays of lower-court decisions on election rules between the end of this study on July 31, 2020 and November 3rd of this year, and perhaps in the weeks after November 3rd.

The increasing importance of preliminary rulings in cases underlines William Baude's point that the shadow docket merits more consideration, beyond the certiorari decisions that already receive considerable attention. As we continue our efforts to gain a better understanding of judicial behavior, the decisions in the shadow docket provide another vantage point from which to probe patterns in the justices' choices and the bases for those choices.

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THE PREVALENCE OF ARTICLES ON U.S. JUDICIAL BEHAVIOR IN FIVE LAW & COURTS JOURNALS

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Reid et al (2020), in a wide-ranging article published in the Spring 2020 issue of this newsletter, laments what its authors see as an over-representation of articles about U.S. judicial behavior in *Journal of Law and Courts (JLC)*. As the official journal of Law and Courts Section, *JLC* is certainly worthy of special attention. Nonetheless, to give a fuller description of publications in the subfield and to give some context to the topics covered by *JLC*, it may be worth examining the subjects of articles in other subfield journals. In particular, the extent to which other subfield journals publish work on U.S. judicial behavior may well affect the set of manuscripts submitted to *JLC* and thus ultimately the content of that outlet. And of course, analyzing journals in addition to *JLC* gives a more complete picture of U.S. judicial behavior's representation in the subfield.

Therefore, I present here a content analysis of five journals that have traditionally published law and courts research: *Journal of Empirical Legal Studies (JELS)*, *The Journal of Law, Economics, and Organization (JLEO)*, *Justice System Journal (JSJ)*, *Law & Social Inquiry (LSI)*, and *Law & Society Review (LSR)*. For each article published in those journals in calendar year 2019, I determine whether the topic is judicial behavior, and if so, whether the article analyzes U.S. judges, as well as whether the author(s) are political scientists.

In short, these five outlets are publishing little work in U.S. judicial behavior. Of 148 articles published in the five journals in 2019, only 10 (7%) analyze U.S. judicial behavior and are written by political scientists. And most of the 10 appear in *JSJ*: considering just *JELS*, *JLEO*, *LSI*, and *LSR*, only 3 out of their 129 articles (2%) involve research on U.S. judicial behavior by political scientists.

Of course, just because a journal does not publish on some topic does not mean that the editors disfavor that topic. The set of manuscripts submitted to a journal influence what gets published, as do reviewer assessments of the manuscripts that are submitted. Without data on submissions and reviews, it is not possible to make causal claims that ascribe responsibility for under- or over-representation of topics. Thus, the empirical analysis here should be understood as descriptive. Still, these results suggest that editors or reviewers at these journals favor work on topics other than U.S. judicial behavior *and/or* that political scientists whose research involves U.S. judicial behavior do not submit to these subfield journals at high rates.

Sample

The sample consists of every article published in print during the year 2019, in *JELS*, *JLEO*, *JSJ*, *LSI*, and *LSR*; this is the same timeframe considered in Reid et al (2020). Within the definition of “article” I include research notes, other short articles, and symposia, but exclude book reviews. This gives 148 articles: 28 in *JELS*, 19 in *JLEO*, 19 in *JSJ*, 43 in *LSI*, and 39 in *LSR*. (I include one article that was ultimately retracted—see Pickett (2020) for discussion.) I viewed or downloaded the full text of each article for analysis.

Definitions

To operationalize requisite variables, I define “judicial behavior,” “U.S. judicial behavior,” and “written by political scientists” as follows. “Judicial behavior” is as an original quantitative or formal-theoretic analysis of a court’s or a judge’s decision-making. I apply this definition loosely (i.e., inclusively): the quantitative analysis can be as simple as a crosstab (see e.g., Milewski 2019), and it does not necessarily have to be central to the article (see e.g., Baldus et al 2019). I conceptualize “decision-making” broadly too, to include for example justices’ language choices in opinions (e.g., Krewson 2019), justice interruptions at oral argument (Feldman and Gill 2019) and state of the judiciary addresses by chief justices (Wilhelm et al 2019).^[1]

I conceptualize “U.S. judicial behavior” as judicial behavior (as just defined) of U.S. judges. An article that considers the behavior of judges in multiple countries qualifies if one of the countries is the U.S.

I classify an article as “written by political scientists” if at least 50% of its authors are political scientists. A “political scientist” is an author who is affiliated with a department of political science (politics, government etc.). Scholars in interdisciplinary departments are classified based on the discipline in which they received their Ph.D. If author affiliation is given in the article, I use that information; otherwise, I use author affiliations located via Google.

Results

I present results in Table 1, which shows article and page counts by topic—U.S. judicial behavior written by political scientists; U.S. judicial behavior by all authors; all judicial behavior—and journal. Of the 148 articles in the sample, only 10 are written by political scientists and analyze U.S. judicial behavior. These articles account for 7% of published articles and 6% of published pages in the five journals. Excluding *JSJ*, only 2% of published articles and the same percentage of published pages are articles covering U.S. judicial behavior written by political scientists.

If we include also articles written by scholars in other disciplines and articles analyzing exclusively non-U.S. judicial behavior, the article and page counts increase, but not dramatically.

^[1]The only “close call” I excluded from judicial behavior was the decision by state associate justices to run for chief justice (Vining, Wilhelm, and Wanless 2019).

For example, across the five journals, only 18 % of articles analyze judicial behavior of any sort. Considering only *JELS*, *JLEO*, *LSI*, and *LSR* this number drops to 14 %.

The conclusion that, excepting *JSJ*, these journals publish little judicial behavior, and even less U.S. judicial behavior written by political scientists, is inescapable. As noted above, this, by itself, does not prove that editors or reviewers disfavor manuscripts on judicial behavior. Still, these results give a more complete picture of topic representation in the law and courts subfield and may help explain why U.S. judicial behavior is well-represented in *JLC*.

Journal:	JELS	JLEO	JSJ	LSI	LSR	All
<u>Article Count</u>						
USJB, PS authors	1	1	7	0	1	10
USJB	2	3	7	2	1	15
JB	6	3	9	3	6	27
All articles	28	19	19	43	39	148
<u>Page Count</u>						
USJB, PS authors	30	31	143	0	27	231
USJB	67	115	143	56	27	408
JB	180	115	172	85	193	745
All articles	884	674	307	1035	1259	4159

Table 1. Article and page counts by topic and journal. USJB = U.S. Judicial Behavior; PS authors = written by political scientists; JB=Judicial Behavior. USJB, PS authors is a subset of USJB, which is a subset of JB, which is a subset of All articles.

Data Availability

Data and code (for Stata) are available on my website [2]. Variables include article title, author names and affiliations (i.e., political science or not), issue and page numbers, as well as whether an article is classified as judicial behavior, and if so, whether it is U.S. or non-U.S.

Disclosure

I have published in *JLC* and have submitted manuscripts to some of the journals in the sample. I served as reviewer for one of the articles in the sample.

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DISMANTLING LEGACIES OF OPPRESSION IN ACADEMIA

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JESSICA STONE - UNIVERSITY OF TEXAS AT EL PASO



Recent events have increased awareness of longstanding, systemic racism and violence against BIPOC (Black, Indigenous, and People of Color) and offer an impetus for academia to address its own inheritance of white supremacist institutional structures (Torres 2020; Reid and Curry 2019a; Blatt 2018; Rampogal 2017; Thomas 2017a, 2017b; McClain et al. 2016; Matthew 2016; Greenberg 2015; Moore 2007) and its responsibility for dismantling systems of oppression. We offer some ideas to aid in addressing these legacies, with four main goals.



First, to ensure that BIPOC voices are institutionalized within our courses, university curricula, and research. Second, ensure that BIPOC scholars are adequately mentored and sponsored so as to ensure equitable opportunities and retention. Third, recruit and train BIPOC students to feed the ‘pipeline’. Finally, eliminate environments of discrimination and exclusion (Melaku and Beeman 2020; Daut 2019; Ferguson 2016; Alexander-Floyd 2008; Alex-Assensohet al.2005; see also all the threads in #BlackInTheIvory). These goals are addressed through two avenues: our individual behaviors and our subfield. Many of these suggestions also apply to departmental and university systems, and we invite faculty, students, and the subfield to initiate introducing and implementing these reforms within our institutions. Nonetheless, we, as individuals and as a subfield, have the ability to enact meaningful changes to make our field more inclusive.

What can you do?

1. *Learn BIPOC faculty and student names, learn to spell and pronounce them correctly, and use their preferred pronouns.*
2. *Diversify your syllabi.* In addition to the fact that BIPOC-produced scholarship is worthy of study, your students see who you prioritize and will not see themselves in fields where neither faculty nor the readings reflect them (Mercado-Lopez 2018). Commit that all of your courses will include perspectives from BIPOC, women, and other disenfranchised groups. No course should include only white (cis) male perspectives.
3. *Cite BIPOC scholars in your research.* “Women Also Know Stuff” (Beaulieu et al. 2017)^[1] and “POC Also Know Stuff” (Lemi, Osorio, and Rush 2020)^[2] are helpful directories to identify scholars that can populate your syllabi and research references. Dion and Mitchell (2020) further offer a template for how you can evaluate how many citations you ‘should’ have in order to be representative to the BIPOC scholars in your field—but more is always better.
4. *Mentor and sponsor BIPOC students and faculty.* While mentorship has been frequently referenced in regard to the promotion of women and BIPOC scholars, sponsorship means the active promotion of BIPOC to others in the field to ensure they receive equitable opportunities for advancement, funding, research collaboration, etc. Both are required, yet these efforts—like most efforts for retention—are largely engaged in by BIPOC such that they are the dependent upon their own abilities to sustain these efforts (Mercado-Lopez 2018).
5. *Cross-list existing courses and develop new, inter-disciplinary courses* with other departments, like African-American Studies, Women and Gender Studies, and Chicano Studies.

[1]<https://womenalsoknowstuff.com>

[2]<https://sites.google.com/view/pocexperts/home?authuser=2>

6. *Develop an anti-racism and decolonization workshop(s)* to help raise awareness and educate faculty and students (and even administrators). While certainly not sufficient as a reform, it can help communicate goals and priorities as well as aid in coordinating reforms and coalition-building.
7. *Hire more BIPOC*. Eliminate names, gender, ethnicity, and school affiliation from job applications until the final round(s). Strategically recruit and solicit applications, and whenever possible hire in pairs or groups to reduce problems of tokenism (such as isolation and overwhelming service and teaching burdens due to being the lone minoritized faculty). Recognize that concerns over a candidate's 'right fit' is usually just code that the candidate does not sufficiently conform to the existing members of the department. This complaint implies either that 1) the department or hiring committee does not view the candidate as a real scholar, 2) that they do not want or cannot see themselves working with the candidate, 3) that, if hired, the candidate is going to be token or face a hostile environment, so the candidate will likely leave, and/or 4) that the candidate does not neatly match onto the social cliché(s) of the department. Also, be aware of how professionalism norms are based upon white, male behaviors and white aesthetics (Uddin 2020; Melaku 2019; Gray 2019; Feagin 2013). Ensure that discussions of candidate private life are off the table, always.
8. *Tenure BIPOC faculty*. This means addressing how 'objective' metrics of promotion criteria are biased because they simultaneously hide and fuel privilege (MacNell, Driscoll, and Hunt 2015). Virtually all of these measures systematically discriminate against BIPOC to generate promotion disparities (for example, see Monforti and Michelson 2008; Misra et al. 2011; Perna 2001). This includes using criteria for promotion and tenure like publication in 'top-tier' journals (Teele and Thelen 2017; Breuning and Sanders 2007; Evans and Moulder 2011), citation counts (Beaulieu et al. 2017; Dion, Sumner, and Mitchell 2018; Maliniak, Powers, and Walter 2013; Mitchell, Lange, and Brus 2013; Smith et al. 2020), and student evaluations (Chavez and Mitchell 2020; Uttl, White, and Gonzalez 2017; Lilienfeld 2016)—just to name a few. Not to mention the additional, often invisible labor, BIPOC scholars engage in that can hinder promotion (Flaherty 2019; Whitaker 2017; Wingfield and Skeete 2016; Grollman 2015; June 2015).
9. *Promote diverse methodologies and epistemologies*, such as qualitative methods, feminist theory and methods, critical race theory, and indigenous methods. At the very least, end the discounting of these methods as 'inferior' to quantitative methods, as that assumption is based upon a history of white supremacy and colonization. No method or area is, as a whole, inferior. Your students and colleagues see who you disparage in professional and casual remarks thereby contributing to hostile environments where scholars will not feel welcome or supported (Gardner 2008).

9. *(continued)* In addition, assumptions that these scholarships and methods lack credibility and objectivity, are not science, are only attractive to specialized audiences, are self-serving, and are political advocacy and lobbying masquerading as scholarship are misplaced (Alexander-Floyd 2015; Hesli and Lee 2013; Brettschneider 2011; Mucciaroni 2011; Seifert and Umbach 2008).
10. *Educate yourself.* Those books you bought about anti-racism, oppression, police brutality, human rights, etc.? Read them. Read, for example, Fields and Fields' (2014) *Racecraft*, Halley's (2020) syllabus for readings on institutionalized racism, Tuck and Wayne's (2012) article on decolonization, Shutack's (2017) continually updated list of things white people can do for racial justice, and Branch and Jackson's (2020) analysis of colorblind narratives and Black experiences. Explore works by Angela Davis, Ibram Kendi, Toni Morrison, Kimberlé Crenshaw, Patricia Hill Collins, bell hooks, Tiffany Midge, Roxanne Dunbar-Ortiz, Joy Harjo, Jake Skeets, Shonda Buchanan, and Ruth Wilson Gilmore—just to name a few. Cozy up with novels by BIPOC authors to connect with more than just their struggles and to reduce the commodification of their pain in the publishing and media industries (McKinney 2020). There are dozens of recommended book lists online. Sit with them, reflect, empathize, and learn.

What can we do as a subfield?

1. *Acquire and maintain updated data on PhD granting, hiring, promotion, and leadership in the subfield.* Data collection and archiving is crucial to be able to monitor progress (or the lack thereof) in our subfield. It allows us to identify which areas in the academic "pipeline" are leaking so we can address them directly, enables us to dispel myths about lack of diversity, and facilitates our ability to evaluate the effects of reforms we make. It is also imperative to collect data—while simultaneously protecting confidentiality and anonymity—on intersectional identities so we can better address lack of representation beyond gender and race/ethnicity as separately measured (Reid and Curry 2019b).
2. *Crease resources for faculty and researchers to facilitate the incorporation of the work of BIPOC to syllabi and manuscripts.* This includes, for example, the development of an online repository of annotated bibliographies that highlights BIPOC scholarship and that
3. *Integrate BIPOC into mainstream Law and Courts.* Make space in our journals for BIPOC scholarship, which often focuses on non-traditional or non-mainstream themes, instead of relegating it to a fringe or discounting it to other 'more appropriate' journals. can be categorized by theme or topic. BIPOC scholars need to be on editorial teams and have an opportunity to serve as lead editor(s), including at the *Journal of Law and Courts*. Organize conference panels based upon themes rather than by 'otherness' of the scholarship.

4. *Make conferences accessible.* COVID-19 has shown how we can develop infrastructure for virtual conferences that can complement existing conferences that normally require travel. We need to make this infrastructure financially and technologically accessible, which would enable increased ability of graduate students, BIPOC, women, care-takers, and others to engage in these events. These virtual options should mimic, as much as possible, the opportunities, engagement, and networking of regular conferences.
5. *Develop undergraduate research opportunities in law and courts,* particularly recruiting BIPOC and minoritized students. Ensure these opportunities are accessible and offer training and mentorship that will assist students in graduate school and careers.
6. *Nominate and promote BIPOC for awards, particularly research-related awards and leadership awards.*
7. *Create spaces dedicated to BIPOC to offer support and resources, enhance networking and mentorship, and reduce experiences with isolation and imposter syndrome.* In this effort, a new group of BIPOC scholars of law and courts has been created, whose mission is to be a safe space for minoritized and racialized scholars engaging in law and court research so as to promote cross-institutional mentorship and collaboration, offer pre-review and research feedback, and provide a platform for professional networking. This group is open to scholars at any level or institution who engage in scholarship on law, courts, justice, and the rule of law (all broadly defined). If you, or someone you know, may be interested in joining this group or would like more information, please contact Dr. Rebecca Reid at rareid@utep.edu.

While not exhaustive, these reforms will help us start redressing white-privileging legacies so as to ensure that ‘diversity and inclusion’ are not the academic equivalent of ‘thoughts and prayers’. It also creates opportunities to enhance student and faculty engagement with current political processes of societal transformation. Meaningfully including BIPOC scholars improves our field’s recruitment and retention of students by eliminating the negative racial climate that is “subtly” (or explicitly) communicated in predominantly white Ph.D. institutions that usually results in substantially higher attrition rates for BIPOC students (Gardner 2008) as well as faculty (Jayakumar, Howard, Allen, and Han 2009). Adding their perspectives and research makes public law more rigorous by offering scholarship that can help propel fixed, narrowly construed, theoretically unsophisticated concepts and relationships into more valid, enriched, and dynamic ones. Including more diverse scholars and scholarship makes public law more salient and relevant to audiences outside our subfield since they synthesize diverse sets of ontologies, epistemologies, literatures, methodologies, and themes that are conducive to inter-disciplinary interests and collaboration. Scholarship that more directly speaks to a variety of ongoing social and political processes and their effects on oft-ignored populations further benefits scholars, policy makers, advocates, and organizers.

Change requires action and leadership, where each of us has a role in dismantling systems of oppression. We have a responsibility as educators and as gatekeepers to turn a critical lens to our own institutions and behaviors, to recognize how each of us play a role within these larger systems of disenfranchisement and violence. We have the opportunity to re-envision and redefine our subfield and academia through collaborative efforts so as to make it more equitable, more accessible, more inclusive, more relevant to the modern world. We have the opportunity and responsibility to enact change. Change is not convenient. It is imperfect yet required, and it benefits us all. This is your invitation, your mandate. Together, we rise.

IN MEMORIAM: MARVIN SCHICK, SCHOLAR OF THE JUDICIAL PROCESS

JEFFREY B. MORRIS - TOURO COLLEGE, JACOB B. FUCHSBERG LAW CENTER

Marvin Schick died on April 23 at the age of 85. He properly will be remembered most as a pioneering advocate for Orthodox Jews. Schick was a major figure in establishing and raising funds for Jewish day schools and yeshivas and an influential legal strategist in fighting for the rights of Orthodox Jews.

Less well known is Schick's contribution to the study of courts. Schick received his Ph.D. from New York University and taught for many years at Hunter and Lehman Colleges and at the New School. In his Ph.D. dissertation, building on the foundation of C. Herman Pritchett and the pioneering work of Jack W. Peltason, Schick broke from the virtually sole focus of public law scholars (political scientists, historians and law professors) of writing almost entirely about the Supreme Court.

Writing at a time when the lower federal courts were becoming more visible because of the civil rights struggle in the South, Schick was not alone in perceiving the value of studying them, although much of the work of political scientists in the 1960s had been limited in reach, focusing on the relationship of background variables to decision-making, bloc analysis and judicial recruitment.

Marvin Schick was the first political scientist to focus in depth upon the work of one Court of Appeals during one time period. In his dissertation [\[1\]](#) and his book, *Learned Hand's Court*, [\[2\]](#)



[\[1\]](#)Marvin Schick, *The United States Court of Appeals for the Second Circuit: A Study of Judicial Behavior* (unpub. Ph.D. dissertation, New York University, 1965).

[\[2\]](#)Marvin Schick, *Learned Hand's Court* (1970).

Schick studied what was probably the strongest court in the United States in the period from 1941 to 1950; a court that included both Learned Hand, already a legendary figure; his able cousin, Augustus Hand; Jerome Frank, a leading legal realist and Charles E. Clark, the major figure in creation of the Federal Rules of Civil Procedure. Schick's book was enriched by his use of a treasure trove of primary sources – memoranda and correspondence exchanged between its judges.

In his book, Schick provided trenchant portraits of the judges, discussed the formal and informal decision-making processes of the Court, analyzed the business of the Court and its relationship with the U.S. Supreme Court. In the fifty years that followed publication of the book, political scientists and other scholars have produced a number of rounded portraits of individual appellate courts – federal and state – and of federal district courts. Schick was ahead of any other political scientists, law professor and historian in producing a work in which the scholar and the non-scholar reader could go to find a rounded picture of a court other than the Supreme Court of the United States.

If Doctor Marvin Schick devoted the greater part of his career to his people and his religion (and it appears that career was worthy and productive), his contribution to the literature on the American judiciary should not be forgotten.

NEW and NOTEWORTHY

Law and Science Dissertation Grant

We are pleased to announce that Arizona State University has launched a new Law and Science Dissertation Grant (LSDG) program, funded through the National Science Foundation (SBE #2016661). This competitive program replaces NSF's successful and longstanding Doctoral Dissertation Research Improvement Grant (DDRIG) program in Law and Science. The award to ASU will provide funding of up to \$20,000 apiece to doctoral students in diverse law-and-science disciplines (e.g., anthropology, criminal justice, economics, forensic science, political science, psychology, sociology) to conduct their dissertation research. The next submission deadline is April 30, 2021.

For more information about the LSDG program, please visit (and share) our website:
<https://newcollege.asu.edu/law-and-science-diss-grant>.

Brian Bornstein, PI, School of Social and Behavioral Sciences, ASU

Scott Barclay, co-PI, School of Social and Behavioral Sciences, ASU

Jon Gould, co-PI, School of Criminology and Criminal Justice, ASU

Better Get to Know a Law and Courter

RYAN C. BLACK - MICHIGAN STATE UNIVERSITY

Hello to everyone out there in the law and courts universe! At long last: episode six! Thanks as always to both Amanda Hollis-Brusky and Shane Gleason for answering my questions in this installment. Feel free to contact me with your questions, comments, or suggestions (rcblack@msu.edu).

-RCB

SHANE GLEASON

TEXAS A&M UNIVERSITY-CORPUS CHRISTI

Shane Gleason is Assistant Professor of Political Science at Texas A&M University-Corpus Christi (<http://shanegleason.com>). He earned



his PhD in Political Science from Southern Illinois University in 2014.

Tell me a little about your background and how you got to where you are today.

I grew up in Cleveland, Ohio and was a first gen college student. Like many Law & Courts scholars, I wanted to be a lawyer when I started college. But as time went on I had a sinking feeling that practicing law wouldn't be as fun as taking classes. In my sophomore year I realized I was having fun writing a term paper. After a chat with the professor, I started thinking about grad school. I thought I would study Congress until I took a civil rights and liberties course. This, in

tandem with Scott Comparato's Supreme Court seminar in my first semester of grad school, won me over to judicial politics.

If you weren't a political scientist, what would you be instead?

Law was always the backup plan, but if I'm thinking about what I would most want to do in a non-political scientist world I would probably get more involved in cat rescue. I've always been a cat person and I chair the committee that looks after the campus cats at my university (so I already have a toe in the cat rescue water). The other thing I really enjoy is craft coffee; so roasting coffee would be pretty cool too.

What are you working on now?

Lately, I've been fascinated with the way language and gender shape success. I'm working on a pair of projects right now looking at how the changing institutional and temporal context of the Court shapes the extent to which the language attorneys use in their briefs and oral arguments interacts with gender to shape success. I've mostly done this with the justice-vote, but now I'm starting to look at interruptions as well.

Best book on your office shelves people may be surprised by?

I actually paused to wander over to my bookshelf to answer this one. I can be fairly sentimental; so I still have the textbook from the class where I started thinking "maybe grad school is right for me" (an old copy of *Congress & Its Members* by Davidson & Oleszek)

and the fifth edition of Epstein & Walker's Civil Rights & Liberties book (from the course where I began to realize courts were the way to go).

Beyond that, I really enjoy judicial biographies ("First" by Evan Thomas is great!), so I have several of those. But, maybe the most unique is a book a friend who is an elementary teacher gave me: a Scholastic book called "Who is Sonia Sotomayor?" which is aimed at about 2nd or 3rd graders. It's a fantastic book that's part of a broader series of biographies about famous Americans. I've bought some of them for my nieces and nephews and I've actually used the story therein about how Sotomayor drove from New York to DC in the pouring rain the night before Obama announced her nomination to the Court in class!

What's some good work other than your own that you've read recently and would recommend?

Lately, I've really enjoyed Dana Patton & Joseph Smith's articles on gender and interruptions at oral arguments. I think they can be a great bridge between gender norms and interruptions (see "what I'm working on" above!). I also think Matt Hall's book on justice personality and the Big Five is fantastic and opens up a host of new questions for future research.

What's your workspace setup like?

I tend to split my time between home and campus (the exact split varies depends on the week). Both are great spaces, but I find that I use one for too long, my productivity goes down. In both spaces, two monitors are a must as too is décor that reflects my personality. So, there is a lot of cat, Cleveland, and sci-fi inspired art. At home, this is just because I spend so much time in that room that I might as well

have a space that gives me joy. On campus, there is a secondary purpose: When I asked one of my professors in grad school why he decorated his office with framed basketball cards, he told me that an office that reflects your personality makes you seem more approachable and human to students. In fact, the first thing Chris Bailey and I ever chatted about was my signed photograph of William Shatner as Captain Kirk (a painting she did of R2-D2 is now next to the Shatner photo).

Since I ride my bike to campus every day, I actually removed a bookshelf to make room to park my bike in my office. In both places, I have ample coffee at hand. While I have a wider variety of brew methods at home, I have extra mugs on campus so I can share coffee with colleagues and students.

What apps, software, or tools can't you live without?

Since I have a unique ability to lose flash drives, Dropbox is absolutely indispensable for me. It's the main way I move files between home and campus. I've also been a Linux user for 15 years and made sure to get special permission to delete Windows and install Linux on my office computer (else I would have opted for a Mac). Other than that, I'm pretty predictable with Rstudio, Stata, Python, Texmaker, LIWC, etc.

What do you listen to while you work?

I get distracted very easily, so anything with lyrics is often problematic for me when working unless I know the lyrics very well. So, I listen to a lot of movie and video game soundtracks. Current favorites include the 2005 Chronicles of Narnia soundtrack and Taylor Davis' fantastic violin covers of the Ocarina of Time. If lyrics are involved, its usually stuff I've listened to a million times before.

Favorite research and teaching hacks?

For research. I'm too much of a perfectionist with drafts. Given half a chance, I'll spend days putting a manuscript through 15 drafts to fix super small text errors. I've found if I tell a coauthor "I'll have it to you by Day X," I'll generally stick to that deadline. For solo authored projects I tell friends and colleagues what I plan to accomplish; it works just the same. Somewhat related, a daily to-do list is great for making me feel like I accomplished something each day.

Teaching: On the first day of class I give students note cards where I ask for their preferred name, major, why they took my class, what they want to know about me/the course, and anything they want me to know about them. The most important questions are the last two. The first is a chance for students to see me as more human and approachable (this is extra important in my intro classes since I have a lot of first generation students-- I get a lot of questions about what advice I have for succeeding in the class and what I like most about Texas). The second often helps me identify students that are struggling in some way and point them toward university resources. I end up e-mailing a lot of these students; it takes a few hours each semester, but it is well worth it.

How do you recharge? What do you do when you want to forget about work?

I'm an avid road biker. My daily ride to campus is a good way to just not think. Sometimes I stare at the bay, other times I count the number of cars parked on the side of the road. Frequently I just try to see how fast I can ride. On rare instances, I have a brilliant idea.

I also read a lot for fun, mostly sci-fi, fantasy, and classic European literature. I really enjoy

when there is some kind of political tie in. So, Tad Williams' War of the Flowers, Kim Stanley Robinson's Mars trilogy, and Asimov's Foundation series are favorites. Most recently I read Anna Karenina on Ivanka Bergova's suggestion. Before that I (finally) read Watchmen. Both were fantastic. As you can tell, I'm all over the place.

Traveling is one of my favorite things. It's an excuse to eat new and delicious vegan food, check out new coffee roasters, see old friends, and watch baseball.

What everyday thing are you better at than everyone else? What's your secret?

Probably brewing coffee. I have an entire cupboard full of coffee brewing implements (Chemex is my favorite) and I really enjoy tinkering with water temperatures, grind sizes, pour technique, and different beans. While I like the brewing process as a quest for the perfect cup, I really enjoy making coffee for others. Last year, I was explaining the Aero Press process to a student during study abroad when the barista asked if I worked in the coffee industry. I took that as validation that I know a thing or two about coffee.

What's your biggest struggle in being a faculty member? How do you try to address it?

Being a faculty member is a lot like Tetris; the blocks keep coming and they keep getting faster. Taking a bit of time off here and there does wonders (whether that be going to the gym after my morning class or spending some time with the campus cats when I keep getting errors in R).

What's the best advice you ever received?

Paraphrasing from several people: Do the things that give you joy; else you'll be miserable.

In the academic context, this means I try to remember I get to research the things that are interesting to me and teach the stuff I'm passionate about, and take care of cats on campus. When I think about it this way, none of it seems like work.

What's the greatest idea you've had that you don't want to do yourself?

I think someone should create a Supreme Court Attorney Database listing every attorney that has appeared before the Court either at oral arguments or on the briefs, along with the full text of those arguments/briefs. Since I'm dreaming at this point, I'd really like if there was demographic data included in there too and it should go back to at least the Warren Court. If you're reading this and inclined to sort through all of the little errors in Oyez and the official transcripts to create such a comprehensive dataset, I will gladly cite you!

Is there anything else you'd like to add that might be interesting to readers?

I've been vegan for 10 years. No, I don't mind if you eat meat in front of me.

(16) Fill in the blanks: I'd love to see __junior person__ and __senior person__ answer these same questions.

Junior: Ben Kassow, Bailey Fairbanks

Senior: Wendy Martinek, Tammy Sarver

AMANDA HOLLIS-BRUSKY

PONMONA COLLEGE

Amanda Hollis-Brusky is an Associate Professor of Politics at Ponmona College (<https://research.pomona.edu/amanda-hollis-brusky/>). She earned her PhD in Political Science from the University of California-Berkeley in 2010.

**Tell me a little about your background and how you got to where you are today.**

I grew up outside of Boston in a working class family. My parents didn't attend college but from the time I was little they told me I would. I was a three sport varsity athlete in high school (field hockey, basketball and softball) and was voted "class athlete." I attended undergraduate at Boston University, where I played softball for about a year before hanging up my cleats to focus on my studies. I majored in philosophy and politics and entered graduate school at Berkeley thinking I would focus on political theory. I was interested in ideas. But I also quickly became interested in American politics – specifically institutions. After TA-ing courses for Gordon Silverstein and Bob Kagan at Berkeley, I realized that constitutional law and public law was a nice marriage of my interests in ideas/theory and practical politics – thinking about where and how those *ideas have*

consequences (sorry, I can't help myself).

If you weren't a political scientist, what would you be instead?

A performer – either a rock musician or an actor. I participate twice a year in “Ladies Rock Camp,” where I get to form a band, write an original song and perform it out live in LA. I love it. I also took an 8 week Improv class in LA when I first moved down here to start my job at Pomona. In addition to giving me a creative outlet for several hours a week, it has improved my teaching and my public-facing work in interviews, lectures, etc.

What are you working on now?

My second book *Separate But Faithful: The Christian Right's Radical Struggle to Transform Law and Legal Culture* came out in October from Oxford. That's exciting, since it is the culmination of about 8 years of work. I am starting work on another project that looks at the Office of Legal Counsel and its role in facilitating the growth of the so-called “imperial presidency” over time. In 2011, I wrote a law review article about the Bush DOJ and its use of the “unitary executive theory” in the War on Terror. In fact, it was my very first publication out of grad school. The question's been burning a hole in the back of my mind for the better part of a decade. I am eager to start working on it in earnest this summer.

Best book on your office shelves people may be surprised by?

“The RBG Workout: How She Stays Strong and You Can, Too.” I use these workouts with my daughters and my Girl Scout troops.

What's some good work other than your own that you've read recently and would recommend?

Because I'm at a SLAC, my reading and teaching tend to be more focused on American Politics more generally. To that end, I have loved teaching and engaging with Liliana Mason's “Uncivil Agreement,” Jennifer Lawless and Richard Fox's “Running From Office,” and Avidit Acharya, Matthew Blackwell and Maya Sen's “Deep Roots.”

What's your workspace setup like?

Pre-pandemic – a lovely and bright corner office, decorated with political mementos, bobble-heads and lots of my daughters' artwork and poetry. Pandemic set-up – a constantly relocating work lap-top that moves with me from the pool area (morning) into my bedroom (early afternoon) to the dining room table (afternoon) to the deck (early evening). It also doubles as my home fitness studio.

What apps, software, or tools can't you live without?

Right now, eight months into the pandemic, Zoom, Pandora and Amazon Music.

What do you listen to while you work?

If I'm writing or doing coding or data analysis, Lizzo or 80s Pop Pandora. If I'm grading or reading, Joni Mitchell Pandora station.

Favorite research and teaching hacks?

About four years ago I did a three day workshop and training in Intergroup Dialogue, which is a research-based approach to fostering inclusive dialogue around difficult/contentious

contentious issues. Since my classes deal with just about every hot button issue you can think of - race, religion, abortion, gender, etc - I draw on these tools to help establish class norms, create a brave space where everyone feels valued, and foster inclusive and respectful dialogue.

How do you recharge? What do you do when you want to forget about work?

Pre-pandemic, I would hang out with my friends, do karaoke, go dancing, or go camping and hiking. These days, I play music (guitar) and binge-watch Star Trek reruns with my daughters - we've made it through all of TNG, DS9, and Voyager. We're now watching Discovery, which is really different from 90s- early 2000's-era Trek but quite excellent. I won't watch TOS because I can't stand Kirk (don't @ me!!).

What everyday thing are you better at than everyone else? What's your secret?

I can juggle and spin a basketball on my finger. My Girl Scouts are very impressed with these secret talents of mine. I also have a really strong throwing arm from my days as a third-baseman and shortstop. I don't get to show it off all that often, but we did have a department softball team in grad school at Berkeley. We named our team "Leviathan" and we would face off against Stanford's political science grad students once-a-year in a match we fondly titled "The Not So Big Game."

What's your top struggle in being a faculty member/how do you try to address it?

Speaking of juggling, my biggest struggle is juggling research, teaching and service. Here at Pomona, we consider ourselves a "research college" - this means that we have all the teaching expectations and high-touch students that you'd find at a SLAC along with the

hands-on faculty governance and service expectations *and also* our research expectations and scholarly productivity standards approximate those of a research university. How am I addressing it? Well, I'm currently addressing it by chairing the "Work-Life Balance Committee." I wish I were kidding. I told our faculty executive committee that I was struggling meeting these conflicting demands. In response, they made me the chair of the committee in charge of making recommendations for work-life balance. #nottheonion

What's the best advice you ever received?

Think of your life, your pursuits and professional aspirations as a three-act play. Maybe being an academic is Act I. What would Act II or Act III look like? I also try to give this advice to my students and former students who are struggling with career choices and professional decisions. Whatever you're doing now, you don't have to do it forever. Learn what you can from it, and think about what the next "Act" of your life might look like.

What's the greatest idea you've had that you don't want to do yourself?

To make Sonia Sotomayor into an internet celebrity a la Ruth Bader Ginsburg by coming up with a clever meme or trope like "Notorious RBG." While I appreciate RBG, I think Sotomayor is the progressive champion on the Supreme Court right now and she should be rightfully elevated in the eyes of the public. I had the opportunity to spend time with and interview Sotomayor when she came to Pomona College about five years ago. She is the real deal. "The People's Justice" (see, wouldn't that make a good meme?)

Is there anything else you'd like to add that might be interesting to readers?

Here is a little-known and interesting fact about me: I used to sell Cutco knives. In fact, I was so good at selling Cutco knives, that I was given the opportunity to run my own branch office while I was a sophomore in college. At one point, I had 100 sales reps working for me. I was 20 years old. I made enough money to send myself to Spain to study abroad my junior year. I no longer sell Cutco knives but I still have them and they work great.

Another fact, relevant to people regardless of whether they're in the market for a set of great knives, is that I am an editorial board member for the Washington Post's Monkey Cage. This is among the best ways to get your work read by a broader audience and I would love to see more submissions from Law and Courts folks.

Fill in the blanks: I'd love to see __junior person__ and __senior person__ answer these same questions.

I'm embarrassed to say I don't know of many junior people in the field – all the more reason to include these features in our section newsletter! Senior person = Vanessa Baird. She is someone whose work I admire but I have not yet had the chance to get to know her.

NEW and NOTEWORTHY: TALKING FEDS **patreon.com/talkingfeds**

Talking Feds is a prominent law and politics podcast hosted by Harry Litman, a former long-time federal prosecutor and Department of Justice senior official.

In addition to its regular episodes, TalkingFeds produces independent content for its subscriber site on Patreon.

In a trip last year to Washington DC, where it put on a series of live podcasts, TalkingFeds produced 3 episodes on important figures in government that are central to contemporary disputes but whose concrete roles can be hard to describe. They are 1) the Solicitor General, 2) the White House Counsel, and 3) the Office of Legal Counsel.

The episodes all feature former principals in the office. So, for the Solicitor General, Paul Clement, Seth Waxman, and Don Verrilli; for the White House Counsel, Bob Bauer and Beth Nolan; and for OLC, Bill Treanor, Marty Lederman, and Kwaku Akowuah. And the Office of Legal Counsel episode also contains a "sidebar" from former Deputy Attorney General Jamie Gorelick on the traditional limitations in communication between the White House and the DOJ.

They are unlike any other product we have seen in their examination of the institutional stress points of the various offices, as well as institutional questions core to each office's function. They're also all pretty good listens.

Here's a short trailer to give you the sense of the 3 episodes:

<https://youtu.be/96XftbmoyeQ>

The three episodes can all be found [atpatreon.com/talkingfeds](https://patreon.com/talkingfeds). That is a subscriber site, for which students are usually asked to pay \$3/month; if you want to discuss a waiver of that fee, we would be glad to.

INTRODUCING COMPARATIVE LAW AND COURTS NETWORK AND LISTSERV

REBECCA A. REID - UNIVERSITY OF TEXAS AT EL PASO

MONICA LINEBERGER - UNIVERSITY OF WISCONSIN-WHITEWATER

Comparative and international law and courts scholarship is a relatively recent addition to the public law subfield, and its growing prominence has highlighted the dynamic interactions of international and domestic legal spaces and emphasized the complex relationships of law and political systems across the world. Yet, scholars in these areas are often isolated from each other, in part due to the international scope of where these research communities reside and the wide range of journals within which their scholarship can be found. This isolation is problematic in that it can be difficult to locate and connect with scholars who share similar interests, to build collaborative research projects and coauthorships, to identify possible research and career opportunities, to form networks of mentorship and sponsorship for junior scholars and graduate students, and to locate appropriate referees for manuscript submissions.

To remedy this, we introduce a new Comparative Law and Courts group, a collaborative network where scholars studying law and courts around the world can interact. This network offers a platform to coordinate junior and senior scholars from around the world to engage in collaboration, mentorship, networking, and research feedback. It welcomes scholars who study international law and courts, transitional justice, transnational courts, and criminal justice systems, among others. As such, we define the study of law and legal systems broadly so as to offer an inclusive space for all scholars. We also hope that this space will help graduate students and prospective graduate students to identify and pursue their research and career interests.

This group consists of a Facebook group (titled Comparative Courts), a directory, Twitter account, and a listserv. If you, or someone you know, may be interested in joining this group (or would like more information), please contact Dr. Rebecca Reid at rareid@utep.edu. Interested parties do not have to have Facebook accounts to join the directory of scholars or the listserv. To be included in the directory, email Dr. Rebecca Reid your name, preferred pronoun, area(s) of expertise, country location, email, and website link. This directory will aid scholars to locate and contact scholars outside of social media platforms, and it will assist in the creation of a public website to enable media, editors, students, etc. to search and identify scholars within certain areas of expertise. Follow us on Twitter **@LawComparative!**

The listserv will further enable scholars to fully engage with the entire research community outside of Facebook. This Comparative Courts Listserv, created by Dr. Monica Lineberger via University of Wisconsin-Whitewater, is a forum for scholars to promote their work, discuss current events related to research, and share announcements of job and research opportunities. The listserv is designed to foster professional connections and collaboration in the growing community of researchers interested in law and courts outside of the United States. We have a policy of non-harassment, where all members are expected to use their power(s) and privilege(s) to the benefit of others and the community. Anyone found in violation of these principles will be notified and excluded from the listserv and group. The email for the listserv is: comparativecourts-l@maillist.uww.edu. Please note that replies are directed to the entire listserv, not to particular authors. If you have any questions about the listserv or would like to join, please email Dr. Monica Lineberger at lineberm@uww.edu.

Books to Watch For

DREW LANIER- UNIVERSITY OF CENTRAL FLORIDA

Paul M. Collins, Jr. (University of Massachusetts Amherst) and **Matthew Eshbaugh-Soha** (University of North Texas) have published *The President and the Supreme Court: Going Public on Judicial Decisions from Washington to Trump* (Cambridge University Press, ISBN 978-1-108-72389-3). "When presidents take positions on pending Supreme Court cases or criticize the Court's decisions, they are susceptible to being attacked for acting as bullies and violating the norm of judicial independence. Why then do presidents target Supreme Court decisions in their public appeals? In this book, the authors argue that presidents discuss the Court's decisions to demonstrate their responsiveness to important matters of public policy and to steer the implementation of the Court's decisions. Using data from Washington to Trump, they show that, far from being bullies, presidents discuss cases to promote their reelection, policy goals, and historical legacies, while attempting to affect the impact of Court decisions on the bureaucracy, Congress, the media, and the public."

Logan Dancey (Wesleyan University), **Kjersten R. Nelson** (North Dakota State University), and **Eve M. Ringsmuth** (Oklahoma State University) have published *It's Not Personal: Politics and Policy in Lower Court Confirmation Hearings* (University of Michigan Press, ISBN: 978-0-472-13183-9). "In order to be confirmed to a lifetime appointment on the federal bench, all district and circuit court nominees must appear before the Senate Judiciary Committee for a confirmation hearing. Despite their relatively low profile, these lower court judges make up 99 percent of permanent federal judgeships and decide cases that relate to a wide

variety of policy areas. To uncover why senators hold confirmation hearings for lower federal court nominees and the value of these proceedings more generally, the authors analyzed transcripts for all district and circuit court confirmation hearings between 1993 and 2012, the largest systematic analysis of lower court confirmation hearings to date. The book finds that the time-consuming practice of confirmation hearings for district and circuit court nominees provides an important venue for senators to advocate on behalf of their policy preferences and bolster their chances of being re-elected. The wide variation in lower court nominees' experiences before the Judiciary Committee exists because senators pursue these goals in different ways, depending on the level of controversy surrounding a nominee. Ultimately, the findings inform a (re)assessment of the role hearings play in ensuring quality judges, providing advice and consent, and advancing the democratic values of transparency and accountability."

Jasmine Farrier (University of Louisville) has published *Constitutional Dysfunction on Trial: Congressional Lawsuits and the Separation of Powers* (Cornell University Press, ISBN 978-1-501-74710-6). "In an original assessment of all three branches, Farrier reveals a new way in which the American federal system is broken. Turning away from the partisan narratives of everyday politics, the work diagnoses the deeper and bipartisan nature of imbalance of power that undermines public deliberation and accountability, especially on war powers. By focusing on the lawsuits brought by Congressional members that challenge presidential unilateralism, the author provides a new diagnostic lens on the permanent institutional problems that have undermined the separation of powers system in the last five decades, across a diverse array of partisan and policy landscapes. As each chapter demonstrates, member lawsuits are an outlet for frustrated members of both parties

who cannot get their House and Senate colleagues to confront overweening presidential action through normal legislative processes. But these lawsuits often backfire – leaving Congress as an institution even more disadvantaged. Farrier argues these suits are more symptoms of constitutional dysfunction than the cure. *Constitutional Dysfunction on Trial* shows federal judges will not and cannot restore the separation of powers system alone. Fifty years of congressional atrophy cannot be reversed in court.”

Ran Hirschl (University of Toronto) has written *City, State: Constitutionalism and the Megacity* (Oxford University Press, ISBN 978-0-190-92277-1). “More than half of the world’s population lives in cities; by 2050, it will be more than three quarters. Projections suggest that megacities of 50 million or even 100 million inhabitants will emerge by the end of the century, mostly in the Global South. This shift marks a major and unprecedented transformation of the organization of society, both spatially and geopolitically. Our constitutional institutions and imagination, however, have failed to keep pace with this new reality. Cities have remained virtually absent from constitutional law and constitutional thought, not to mention from comparative constitutional studies more generally. As the world is urbanizing at an extraordinary rate, this book argues, new thinking about constitutionalism and urbanization is desperately needed. In six chapters, the book considers the reasons for the ‘constitutional blind spot’ concerning the metropolis, probes the constitutional relationship between states and (mega)cities worldwide, examines patterns of constitutional change and stalemate in city status, and aims to carve a new place for the city in constitutional thought, constitutional law and constitutional practice.”

Gary Jeffrey Jacobsohn (University of Texas at Austin) and **Yaniv Roznai** (Interdisciplinary Center Herzliya) have co-authored *Constitutional Revolution* (Yale University Press, ISBN 978-0-300-23102-1). “Few terms in political theory are as overused, and yet as under-theorized, as constitutional revolution. In this book, the authors argue that the most widely accepted accounts of constitutional transformation,

such as those found in the works of Kelsen, Arendt, and Ackerman, fail adequately to explain radical change. For example, a ‘constitutional moment’ may or may not accompany the onset of a constitutional revolution. The consolidation of revolutionary aspirations may take place over an extended period. The ‘moment’ may have been under way for decades—or there may be no such moment at all. On the other hand, seemingly radical breaks in a constitutional regime may actually bring very little change in constitutional practice and identity. Constructing a clarifying lens for comprehending the many ways in which constitutional revolutions occur, the authors seek to capture the essence of what happens when constitutional paradigms change.”

INFORMATION FOR CONTRIBUTORS

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 publishes three editions a year (Fall, Summer, and Spring). Deadlines for submission of materials are: April 1 (Spring), July 1 (Summer), and November 1 (Fall). Contributions to Law and Courts should be sent to the editor:

Amanda Bryan

Editor - Law and Courts Newsletter

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Articles, Notes, and Commentary

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

Footnote and reference style should follow that of the American Political Science Review. Please submit your manuscript electronically in MS Word (.docx) or compatible software and provide a “head shot” photo. In addition to bibliography and notes, a listing of website addresses cited in the article with the accompanying page number should be included.

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 possible. Finally, authors should notify BOOKS TO WATCH FOR EDITOR, Drew Lanier, of publication of manuscripts or works that are soon to be completed.

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