

# JUDICIAL PROCESS IN AMERICA

UNIVERSITY OF WISCONSIN OSHKOSH | POLITICAL SCIENCE DEPARTMENT

POLITICAL SCIENCE 392 (001C) | 3 CREDITS

SPRING 2021 | MWF 9:10–10:10 | ONLINE (SYNCHRONOUS)

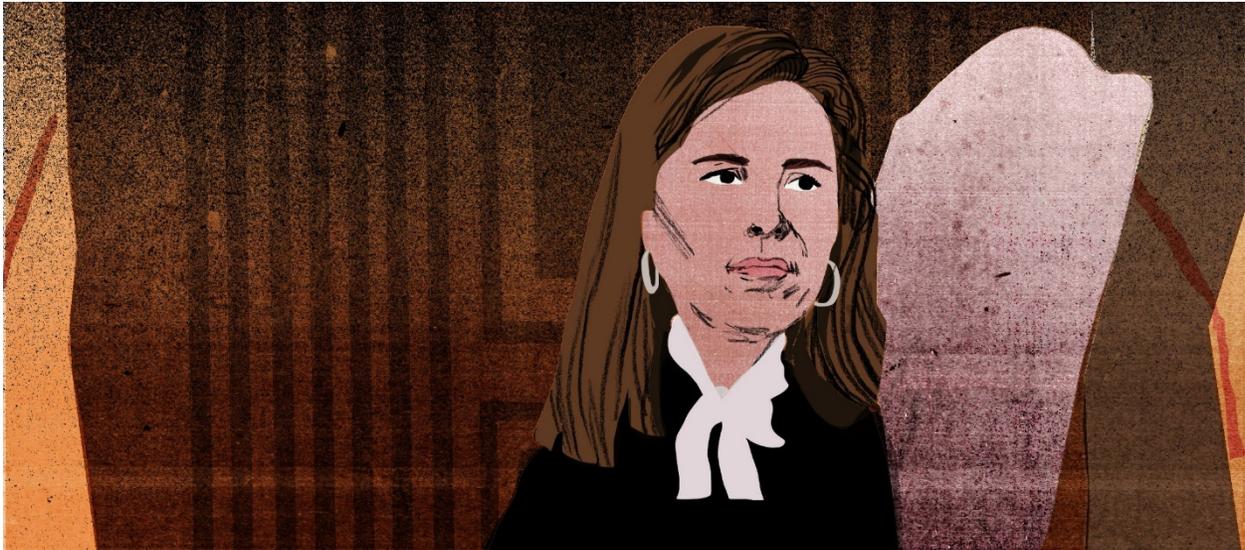


Image Source: [Ellic Foreman-Peck](#)

*Amy Coney Barrett was the third person nominated by President Trump and confirmed by the Senate to serve on the U.S. Supreme Court. She replaced Justice Ruth Bader Ginsburg.*

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## PROFESSOR

Jerry D. Thomas

Pronouns: he/him/his (for now)

thomasj@uwosh.edu

J.D., Chicago-Kent College of Law

Ph.D., University of Kentucky

M.P.A., University of South Carolina

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## COURSE DESCRIPTION

Focuses on courts in the political process. Examines decisions by judges, juries and other decision-makers in the judicial process. Emphasizes explanations for decisions rather than simply describing decisions. For example, attention is given to the effects of race, social class and other demographic characteristics of a defendant on the verdict or sentence imposed. Other related topics include selection of judges and impact of judicial decisions.

Prerequisite: Political Science 253 or consent of instructor.

This course counts toward the Political Science major and minor. It is also the capstone for the Law & Policy minor. The course emphasizes research and writing and is highly interactive, akin to a seminar.

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## LEARNING OUTCOMES

### *Judicial Process Learning Objectives*

- Analyze the importance of judges' background characteristics to court legitimacy
- Describe the agenda-setting and decision-making processes for the U.S. Supreme Court and evaluate their equity and effectiveness
- Critically analyze theories of judicial behavior
- Identify and describe the role of law and politics in judicial decision making

### *Essential Learning Outcomes*

- Written and oral communication
- Technology and information literacy
- Synthesis and advanced accomplishment across general and specialized studies demonstrated through the application of knowledge, skills and responsibilities to new settings and complex problems.

### *Political Science Department Learning Goals*

Several political science learning goals cross-cut the learning objectives stated above, including:

- *Theoretical Context of Politics*: Understand and apply legal and judicial theory frameworks
- *Contemporary Politics*: Understand and explain contemporary judicial politics
- *Analytical Ability*: Analyze and explain judicial behavior, patterns, and events
- *Written and Oral Communication Skills*.

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## ONLINE LEARNING & CANVAS

This course is taught entirely online. This is a synchronous course, which means it is taught “live” at the scheduled times when students are connected and active. Students are expected to be present for class the same as if this course were taught face-to-face. The primary system I use for instruction is *Canvas*. There are a number of resources to help students get acclimated to Canvas. Here is a course to help students learn the basics. [Canvas Introduction](#).

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## ATTENDANCE

Attendance is expected and required. I take attendance at the beginning of class, mainly to learn student names. Because participation in discussions and activities is required, you should remember that you cannot participate if you are absent. Absences are sometimes necessary, but it is unnecessary to contact me about absences unless it is an extended absence.

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## OFFICE HOURS

My office is Sage 4619, but because of the pandemic, I will be working almost exclusively from home this term. I will hold “student drop-in hours” in Microsoft Teams (MS Teams) MW 10:30-12:00 or by appointment.

The Political Science Department uses Microsoft Teams (MS Teams) for holding office hours. This system is available to all UWO students. When logging into MS Teams, look closely at the status symbols for your instructor. A green dot by the professor's icon (which may be their picture or their initials) means they are available. A red dot means they are busy. Generally, you are able to join office-hour meetings and talk openly in the forum or use the chat function freely. At times, I may be in a private meeting with a student during office hours, and I will mark my availability as “busy” (a red dot). We hope that using MS Teams for office hours for all of our courses will help students become more accustomed to virtual office hours during the

pandemic. The main point to remember is that we are available to you. Please use our office hours freely and often. We are here to help. Many faculty are also happy to set up meetings outside of office hours if students have conflicts with the posted times.

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### TEXT AND READINGS

Greenhouse, Linda. 2020. *The Supreme Court: A Very Short Introduction*, Second Edition (Oxford Univ. Press).

ISBN: 978-0-19-007981-9. [Make sure you get the second edition published in 2020.]

Baglione, Lisa A. 2011. *Writing a Research Paper in Political Science*, 4th Ed. (CQ Press).

ISBN: 978-1-506-36742-2

Other readings are available electronically at no additional cost to students.

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### INCLUSION

Law and politics affect all people irrespective of political affiliation, socio-economic status, gender, sex, race, sexuality, national origin, ethnicity, veteran status, religion, physical or learning ability, and other characteristics with which students commonly identify. So, I use inclusive pedagogies to foster input from everyone. *Input from all students is valued and expected.*

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### FREEDOM OF SPEECH

My classes are free speech zones. Say anything you want to say. No topic or viewpoint is off limits. Use any words or symbols you want to express yourself. Exercising freedom of speech carries the burden of being responsible for your speech. Similarly, exercising silence carries the burden of your silence.

**“Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.”**

-- Tinker v. Des Moines Indep. Comm. Schl. Dist. (393 U.S. 503, 513, 1969)

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### ASSESSMENT AND GRADING

I use the 93/90/87 grading scale for this course.

A 93–100 B 83–86 C 73–76 D 63–66

A- 90–92 B- 80–82 C- 70–72 D- 60–62

B+ 87–89 C+ 77–79 D+ 67–69 F 0–59

### PARTICIPATION (33%)

Good participation means students read and prepare before class and actively participate in discussions. Participation comfort levels vary substantially. At one end of the spectrum, students fear public speaking (more than death) and prefer to remain anonymous in class. These students should work actively to overcome this fear. On the other end of the spectrum are gunners. Gunners are eager to speak and tend to dominate conversation. These students should be mindful that learning involves active listening and should provide others an opportunity to speak. Quality of participation is as important as quantity. Students receive the best participation grades when they demonstrate critical thinking and assimilate complex ideas, including classmates’ ideas, across a range of topics. These participators contribute meaningfully to the learning of

others. There are formal participation opportunities, including leading class discussions and presenting research. Students help determine their participation grades at the end of the term by writing a reflection essay evaluating their own performance and learning.

### **EXAM (34%)**

There is one comprehensive exam at the end of the course.

### **RESEARCH PROJECT, PAPER & PRESENTATION (33%)**

Several intermediate research elements will be collected throughout the term in connection with a research project including a literature review, research design, and personal reflection on the research process.

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### **DEADLINES AND MISSED ASSIGNMENTS**

Turn in assignments on the due dates. Students who miss assignments will be excused only for university-approved reasons (e.g., documented illness, family death, university-sponsored activity).

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### **EARLY ALERT**

During the fifth week of classes, you will receive by e-mail notice about your progress in this course. This is called *Early Alert*. Early Alert helps you evaluate your study skills and class attendance so you know if you are on the right track. If you need to make changes, there are tons of resources available. Early Alert grades are not permanent and do not appear on your transcript.

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### **ACADEMIC INTEGRITY**

Expectations for Academic Honesty: A college education is intended to develop your skills, knowledge, and confidence. Graded assignments are designed to work on these items. Thus, to gain the skills, knowledge, and confidence of a college-educated person all graded work is to be your own. When you are directed to work alone, an assignment or test must be done by you, its primary ideas are to be your own, and any outside materials should be dealt with properly (quoted when using someone's words, and cited when quoting or referencing them in any other way). When your teacher directs you to work in teams, the work is to be done by the team. More information can be found [here](#).

UWO is committed to academic integrity for all students. System guidelines state, "Students are responsible for the honest completion and representation of their work, for the appropriate citation of sources, and for respect of others' academic endeavors." We expect students to review and adhere to procedures related to academic honesty as outlined in Chapter UWS 14, Wisconsin Administrative Code, available on the Dean of Students website [here](#). Students should direct specific questions regarding the code (and institutional procedures approved to implement the code) to the Dean of Students Office.

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### **STUDENT CONSUMER INFORMATION**

Students should see the following URL for disclosures about essential consumer protection items required by the Students Right to Know Act of 1990 available [here](#).

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### **GRIEVANCES**

The Department of Political Science is committed to offering you a high-quality classroom experience, and we take your feedback seriously. If you have concerns about anything related to this course, assignments, or teaching method, you are encouraged to first speak with your instructor directly. If you are not comfortable speaking with the instructor, you are invited to speak with the Chair of the Department of Political Science,

Dr. James Krueger. He can be reached at [kruegerj@uwosh.edu](mailto:kruegerj@uwosh.edu). Should he be unable to resolve your concerns, he will guide you to appropriate resources within the College of Letters and Science.

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### ACCESSIBILITY SERVICES

UWO provides reasonable accommodations to students who have disabilities that may affect their ability to participate in course activities or meet course requirements. We accommodate *flexibly* and *individually*. Register with *Accessibility Services* or Project Success to get an accommodation recommendation form.

#### Accessibility Services

125 Dempsey Hall

(920) 424-3100

[dean1@uwosh.edu](mailto:dean1@uwosh.edu)

[Accessibility Services Website](#)

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### NOTE TO POLITICAL SCIENCE MAJORS

Political Science majors should take Political Methodology (245) in either their sophomore or first semester of their junior year. PS245 is a prerequisite for the senior capstone, Political Analysis (401), and cannot be taken concurrently.

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### SCHEDULE AND ASSIGNMENTS

Changes to the schedule are inevitable, especially in a course on American government and politics where current events drive our focus and discussions. Changes to the schedule will be communicated in class or through e-mail. If substantive changes are made, notification will be provided in a timely manner and a revised syllabus made available.

#### WEEK 1: INTRO AND OVERVIEW (FEB. 1)

Syllabus, Create Canvas profile

Judicial Process Pre-Assessment (Canvas)

U.S. Constitution, Article III (Greenhouse Appendix)

#### WEEK 2: OVERVIEW OF THE COURTS (FEB. 8)

Court Organization (Baum ch. 2 on Canvas)

Wisconsin Courts (Canvas handouts)

#### WEEK 3: SUPREME COURT (FEB. 15)

Greenhouse, Linda. 2020. *The Supreme Court: A Very Short Introduction*.

#### WEEK 4: RESEARCH PROCESS (FEB. 22)

Baglione ch. 1–4

Research project guidelines, topics, and teams

Briefing Cases (guidelines)

#### WEEK 5: FIRST AMENDMENT RESEARCH (MAR 1)

*Tinker v. Des Moines Ind. Comm. Schl. Dist.*, 393 U.S. 503 (1969) (re: Viet Nam protest armbands in high school; [full case](#) and Oyez [summary](#))

*Healy v. James*, 408 U.S. 169 (1972) (re: campus recognition of SDS organization; [full case and case syllabus](#))

*Widmar v. Vincent*, 454 U.S. 263 (1981) (re: campus recognition of religious organizations; [full case](#) and Oyez [summary](#))

*Miller v. California*, 413 US 15 (1973) (re: obscenity; [full case](#) and Oyez [summary](#))

*Brandenburg v. Ohio*, 395 US 444 (1969) ([summary](#))  
*Papish v. Board of Curators*, 410 US 667 (1973) (re: obscenity in university newspapers; [full case \(pur curium opinion\)](#))  
*Morse v. Frederick*, 551 US 393 (2007) (re: “Bong Hits 4 Jesus” banner at school event; Oyez [summary](#))

**WEEK 6: FIRST AMENDMENT CASES (CONTINUED) & RESEARCH DESIGN (MAR 8)**

Baglione ch. 5 and ch. 7  
Leanza, Cheryl A. 2007. ‘Heckler’s Veto Case Law as a Resource for Democratic Discourse.’ *Hofstra Law Review* 35 (3). (on Canvas)

**WEEK 7: COLLEGIAL COURTS & U.S. COURTS OF APPEALS (MARCH 15)**

Cross, Frank B. 2003. “Decisionmaking in the U.S. Courts of Appeals” *California Law Review* 91(6): 1457–1515 (on Canvas)

Summarize Cross for your literature review

Kastellec, Jonathan P. 2011. “Panel Composition and Voting on the U.S. Courts of Appeals over Time” *Political Research Quarterly* 64(2): 377-391 (on Canvas)

Activity: Collegial Court Simulation

**WEEK 8: SPRING BREAK (MARCH 22)**

**WEEK 9: JUDGES & JUDGE SELECTION (MARCH 29)**

Baum ch. 4 (on Canvas)

Discussion: Contemporary Supreme Court Justice Nominations and Confirmations

**WEEK 10: DATA AND CASE SELECTION (APR. 5)**

Working with Data (Spaeth Coding Conventions and Creating a Dataset)

First Amendment Cases in the U.S. Courts of Appeals

**WEEK 11: FORECASTING DECISIONS (APR. 12)**

Symposium: Forecasting U.S. Supreme Court Decisions. *Perspectives on Politics*, Vol. 2 (4): December 2004.

**WEEK 12: WRITING WORKSHOPS (APR. 19)**

Baglione ch. 6 and ch. 9

Deadly Sins in Writing, Revision Circle (handouts)

**WEEK 13: SUPREME COURT—CURRENT EVENTS (APR. 26)**

Topics and readings TBD

**WEEK 14: RESEARCH PRESENTATIONS (MAY 3)**

Students present research projects.

**WEEK 15: WRAP UP & ASSESSMENTS (MAY 10)**

Exam, course evaluations, and reflections

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**OTHER TOPICS (AS TIME PERMITS)**

**LEGITIMACY**

Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. “The Supreme Court and the US Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?” *British Journal of Political Science*. 33: 535-556.

Gibson, James L. and Gregory A. Caldeira. 1992. “Blacks and the United States Supreme Court: Models of Diffuse Support.” *Journal of Politics* 54(4): 1121-1145.

#### **JUDICIAL BEHAVIOR**

Gibson, James L. 1983. "From Simplicity to Complexity: Development of Theory in the Study of Judicial Behavior." *Political Behavior*. 5 (1): 7-49.

Segal, Jeffrey A., and Harold J. Spaeth. 1996. "The Influence of Stare Decisis on the Votes of Supreme Court Justices." *American Journal of Political Science* 40: 971-1003

Songer, Donald R., and Stefanie A. Lindquist. 1996. "Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision Making." *American Journal of Political Science* 40(November): 1049-1063.

Epstein, Lee, Valeria Hoekstra, Jeffrey Segal, and Harold J. Spaeth. 1998. "Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices." *Journal of Politics* 60: 801-818.

#### **CONSENSUS AND UNANIMITY**

Epstein, Lee, Jeffrey A. Segal, and Harold J. Spaeth. 2001. "The Norm of Consensus on the U.S. Supreme Court," *American Journal of Political Science*. 45: 2. 362-377.

O'Connor, Sandra Day. 2003. "William Howard Taft and the Importance of Unanimity," *The Majesty of the Law*. p. 113-122.