

JUDICIAL PROCESS IN AMERICA

UNIVERSITY OF WISCONSIN OSHKOSH | POLITICAL SCIENCE DEPARTMENT

POLITICAL SCIENCE 392 (001C) | 3 CREDITS

SPRING 2023 | T/TH 9:40–11:10 | SAGE 4218



Ketanji Brown Jackson, the most recent justice to join the U.S. Supreme Court, was nominated by President Biden and confirmed with bipartisan support in the U.S. Senate in 2022. She is the first Black woman to serve on the Court.

PROFESSOR

Jerry D. Thomas

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Ph.D., University of Kentucky

M.P.A., University of South Carolina

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he/him/his for now

OFFICE HOURS

My office is Sage 4628. I am available during office hours T/TH 11:30–1:00 or by appointment.

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 a capstone course for the Law & Policy minor. The course emphasizes research and writing and is highly interactive, akin to a seminar.

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
- Critically analyze theories of judicial behavior
- Distinguish and describe the roles of law and politics in judicial decision making
- Apply legal and political theories to analyze case opinions

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, including judge selection
- *Analytical Ability*: Analyze and explain judicial behavior, patterns, and events
- *Written and Oral Communication Skills*.

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 one.

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.]

Other readings are available electronically at no cost to students.

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.*

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 (25%)

Participation is based on student preparation for and contributions to class. Minimally, students must attend class and must read and prepare course materials before coming to class. Participation comfort levels vary

substantially. At one end of the spectrum are *deafthers*—students who fear public speaking (more than death). These students should work actively to overcome this fear. On the other end of the spectrum are *gunners*, who are eager to speak and tend to dominate conversations. These students should be mindful that learning involves active listening and should provide others an opportunity to speak. Quality of participation is important. 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, including the professor. Students write a reflection at the end of the term assessing their own participation, both strengths and challenges.

Midterm Exam (25%)

The midterm exam assesses student's command of basic judicial processes and American court systems.

Case Briefs and Reflection Papers (25%)

Students regularly write brief (1–2 pages) papers in preparation for class discussions. About half are case briefs. The others are reflection papers that ask students to comment on readings before coming to class. Students submit these writing assignments on the day the readings are discussed. Because these assignments are intended to prepare students for discussions, late writing assignments are not accepted.

Politico-Legal Analysis Paper (25%)

Students write a paper that analyzes case opinions by applying legal and political theories from the course.

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).

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.

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.

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](#).

NOTE TO POLITICAL SCIENCE MAJORS

Political Science majors should take Political Methodology (245) in either their sophomore year or the first semester of their junior year. If you have questions about this requirement, your course schedule, possible internships, or career preparation please reach out to your faculty adviser. Students are encouraged to meet with their faculty advisers at least once per year. If you are unsure who your adviser is, you can check TitanWeb or email Angelee Hammond at hammond@uwosh.edu.

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. Should he be unable to resolve your concerns, he will guide you to appropriate resources within the College of Letters and Science.

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
[Accessibility Services Website](#)

REGISTER TO VOTE . . . AND VOTE

This is a political science class, and I encourage everyone to participate in our democracy. Minimally, voting is a great start.

Wisconsin Registration Methods & Deadlines

- *In Person*: The Friday before Election Day
- *By Mail*: Postmarked at least 20 days before Election Day
- *Online*: 20 days before Election Day (<https://myvote.wi.gov/en-us/>)
- *At the Polls*: Individuals may register to vote in person at your polling place on Election Day. You must provide documents for proof of residency and proof of identification.

Other Wisconsin voting information can be found at [MyVoteWisconsin](#).

Other States

Students who live in other states can easily find out how to vote with a little bit of online research. Every state has an option for submitting an absentee ballot, and many states have early, in-person voting if you make a trip home. A great starting place for your research is [Vote.org](#).

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 (Jan 30)

Syllabus, Introductions

Judicial Process Pre-Assessment

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

Week 2: Overview of the Courts (Feb. 6)

Court Organization (Baum ch. 2 on Canvas)

Wisconsin Courts (Canvas handouts)

Lecture (review): Legal system, cases, citations, opinion types, and related topics

Activity: Collegial Court Simulation

Week 3: Supreme Court and Judicial Process (Feb. 13)

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

- Origins, ch. 1
- The Court at Work (1), ch. 2
- The Court at Work (2), ch. 5
- The Court and the Other Branches, ch. 6

Week 4: Judges and Judge Selection (Feb. 20)

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

- The Justices, ch. 3
- The Chief Justice, ch. 4

Baum ch. 4 (on Canvas)

Melone, Albert P. 2005. "The Senate's Role in Supreme Court Nominations and the Politics of Ideology versus Impartiality," in *Judicial Politics: Readings from Judicature*, Elliot E. Slotnick (ed). pp. 529–43

Discussion: Contemporary Supreme Court Justice Nominations and Confirmation Hearings

Week 5: Court Legitimacy (Feb 27)

O'Connor, Sandra Day. 2003. "William Howard Taft and the Importance of Unanimity," *The Majesty of the Law*. p. 113–22.

Douglas, William O. 2012. "The Dissent: A Safeguard of Democracy" in *Judges on Judging: Views from the Bench*, David M. O'Brien (ed). pp. 149–53.

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: 535–56.

Week 6: Modes of Constitutional Interpretation (March 6)

Selections from O'Brien, David M. (ed.) 2012. *Judges on Judging: Views from the Bench*.

- Posner, Richard A. "What Am I, a Potted Plant? Case Against Strict Constructionism," pp. 223–25
- Scalia, Antonin. "Originalism: The Lesser Evil," pp. 228–36
- Marshall, Thurgood. "The Constitution: A Living Document," pp. 244–48
- Souter, David H. "On Constitutional Interpretation," pp. 261–68
- Ginsburg, Ruth Bader. "Speaking in a Judicial Voice: Reflections on *Roe v. Wade*," pp. 269–75
- Breyer, "Stephen G. Our Democratic Constitution," pp. 276–90

Week 7: Review and Assessment (March 13)

Wrap-up, review, and Exam 1

Week 8: Spring Break (March 20)

Week 9: Judicial Behavior (Mar 27)

Exam debrief

George, Tracey E. and Lee Epstein. 2005. "On the Nature of Supreme Court Decision Making," in *Inside the Judicial Process: A Contemporary Reader in Law, Politics, and the Courts*, Jennifer Segal Diascro and Gregg Ivers (eds). pp. 51–56.

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

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: 801–18.

Week 10: Reading and Briefing Cases, Intro to First Amendment Cases (Apr 3)

Review: Briefing Cases

Lecture: First Amendment (speech) basics (*Brandenburg v. Ohio*, *Texas v. Johnson*, and others)

Week 11: Reading and Briefing Cases—Speech and Student Rights (Apr 10)

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

Brief and print a copy to turn in during class

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

Brief and print a copy to turn in during class

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

Brief and print a copy to turn in during class

Week 12: Case Analyses and Writing (First Amendment & Student Rights) (Apr. 17)

Papish v. Board of Curators, 410 US 667 (1973) (re: obscenity in university newspapers; [full case \(pur curium opinion\)](#)) (as time permits)

Morse v. Frederick, 551 US 393 (2007) (re: "Bong Hits 4 Jesus" banner at school event; Oyez [summary](#))

- Listen to Oral Arguments

Writing Guidelines: Evaluate the five opinions in *Morse v. Frederick*. Which one(s) do you find most persuasive? Was the case decided, in your view, rightly or wrongly?

Writing Workshop

- Review Writing Guidelines
- Writing Efficiently (handouts)
- Citations (APSA Style Guide)

Week 13: A Case with Many Opinions, and Journal Articles (Apr. 24)

Morse v. Frederick, 551 US 393 (2007) (re: "Bong Hits 4 Jesus" banner at school event; Oyez [summary](#))

- Read and brief the case, including all concurrences and the dissent
- Bring printed case briefs to class

Legal Journal and Law Review Articles (Student research and discussions)

Week 14: *Morse v. Frederick*—A More Informed Discussion (May 1)

Paper Discussions

Week 15: Wrap Up & Assessments (May 8)

Current Events

Course evaluations and reflections