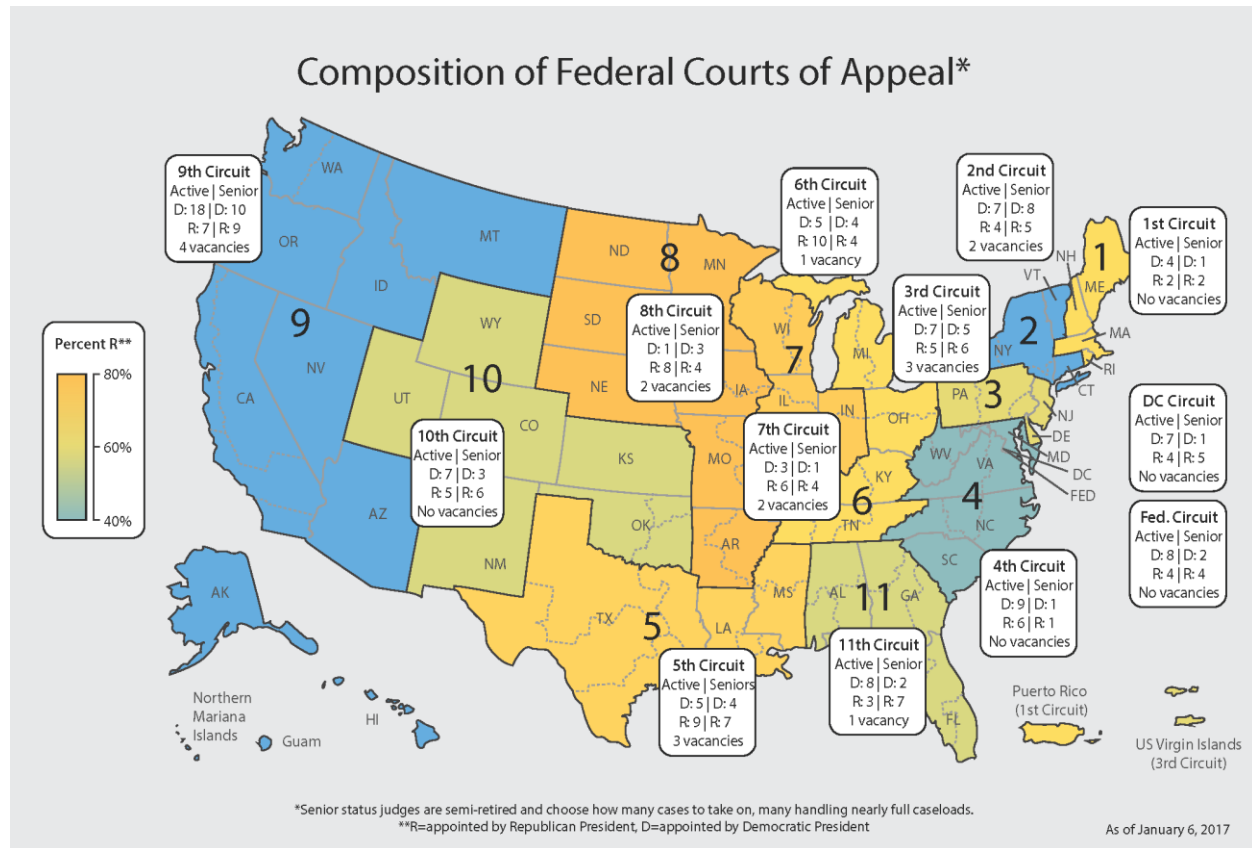


# JUDICIAL PROCESS IN AMERICA

UNIVERSITY OF WISCONSIN OSHKOSH | POLITICAL SCIENCE DEPARTMENT

Political Science 392 (3 credits) | MWF 9:10–10:10 | Sage 4224 | Spring 2017



Source: [JudicialNominations.org](http://JudicialNominations.org)

## JERRY D. THOMAS

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## COURSE DESCRIPTION

This course focuses on courts in the political process and examines decisions by judges, juries and other decision-makers in the judicial process. The course emphasizes explanations for decisions rather than simply describing decisions. For example, the course examines selection of judges as an impact on judicial decisions.

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. Prerequisites: Junior standing and Political Science 253.

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## LEARNING OBJECTIVES

### *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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## TEXTS AND READINGS

Baum, Lawrence. 2013. *American Courts: Process and Policy*, 7th Ed. (Wadsworth).

ISBN: 978-0-495-91637-6.

Greenhouse, Linda. 2012. *The Supreme Court: A Very Short Introduction* (Oxford Univ. Press).

ISBN: 978-0-199-75454-0.

Baglione, Lisa A. 2011. *Writing a Research Paper in Political Science*, 3rd Ed. (CQ Press).

ISBN: 978-1-483-37616-5

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

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## CLASS GUIDELINES

I have four principles I ask students to observe. Be *honest, energetic, reliable, and respectful*.

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## ATTENDANCE

Attendance is expected. I take attendance at the beginning of each class, mainly to learn student names. Remember, participation is required. You cannot participate if you are absent. Absences are sometimes necessary. If you are absent, it is unnecessary to e-mail or contact me, unless it is an extended absence. It is your responsibility to contact a classmate for any missed notes or assignments. I do not supply notes or conduct one-on-one lectures. I am always happy to meet with students to review unclear points.

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## DEADLINES AND MISSED ASSIGNMENTS

Students are expected to turn in assignments on the due dates. Students who miss assignments will be excused only if they have a bona-fide reason according to university policy (e.g., documented illness, family death, university-sponsored activity). In short, turn in assignments on time. If unable to do so, contact me to discuss individual situations.

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## ACADEMIC INTEGRITY

UWO is committed to a standard of academic integrity for all students. The 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." Students are subject to disciplinary action for academic misconduct. Students on the UWO campus have been suspended from the university for academic misconduct. Students are encouraged to review the procedures related to violations of academic honesty as outlined in Chapter UWS 14, Wisconsin Administrative Code, available on the Dean of Students website at [www.uwosh.edu/stuaff/dean/student-conduct](http://www.uwosh.edu/stuaff/dean/student-conduct). Specific questions regarding the code (and institutional procedures approved to implement the code) should be directed to the Dean of Students Office.

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## COURSE REQUIREMENTS AND ASSESSMENTS

This course uses the 93/90/87 grading scale.

A	93–100	B-	80–82	D+	67–69
A-	90–92	C+	77–79	D	63–66
B+	87–89	C	73–76	D-	60–62
B	83–86	C-	70–72	F	0–59

**PARTICIPATION (33%)**—Good participation means a student reads and prepares before class and participates actively in discussions. Participation comfort levels vary substantially. At one end of the spectrum, some students fear public speaking (more than death) and would 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 best participation grades when they demonstrate critical thinking and when they assimilate complex ideas, including classmates’ ideas, across a range of topics. Such participators contribute meaningfully to the learning of others, including the professor.

There are formal participation opportunities, including leading class discussions on a particular assigned reading and presenting research.

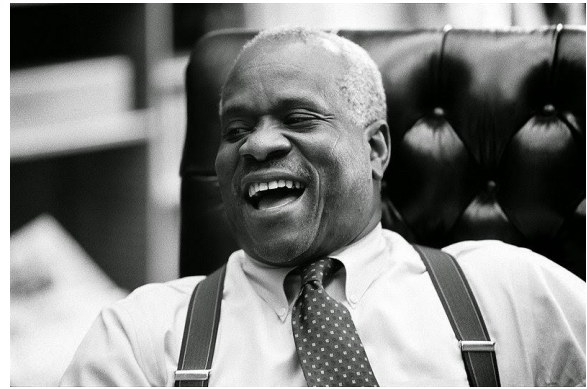
**EXAM (34%)**—There is one comprehensive exam at the end of the course.

**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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## INCLUSIVE EXCELLENCE

Law affects all citizens irrespective of race, gender, sex, sexual orientation, socio-economic status, national origin, ethnicity, religion, physical and learning ability, and myriad other characteristics with which students identify. Hence, this course incorporates inclusive excellence pedagogies and activities. *Input from all students is valued and expected.*



*Justice Thomas talks much (much) less than his colleagues during oral arguments, but he does not shy from expressing his views. He frequently writes dissenting opinions.*

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## D2L

Students are required to use D2L. For questions about training or for technical assistance, call the UW help desk at (920) 424–3020.

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## SCHEDULE AND ASSIGNMENTS

Changes to the schedule are inevitable and will be communicated in class or e-mail. In addition to the topics listed for each week, we will reserve time in class every week for research projects.

### WEEK 1: INTRO AND OVERVIEW (JAN. 30)

Syllabus, Create D2L profile  
U.S. Constitution, Article III (G-house Appendix)  
Current Events in Judicial Process

### WEEK 2: OVERVIEW OF THE COURTS & RESEARCH PROCESS (FEB. 6)

Federal Judicial System (Baum ch. 1)  
Baglione ch. 1–2

### WEEK 3: COURT ORGANIZATION (FEB. 13)

Baum ch. 2; Wisconsin Courts (D2L handouts)

### WEEK 4: SUPREME COURT (FEB. 20)

Greenhouse, Linda. 2012. *The Supreme Court: A Very Short Introduction*.  
Briefing Cases (review guidelines)

**WEEK 5: FIRST AMENDMENT RESEARCH (FEB. 27)**

*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](#))

Research project guidelines, topics, and teams  
Baglione ch. 3–4

**WEEK 6: APPELLATE COURTS, HYPOTHESES & RESEARCH DESIGN (MARCH 6)**

Baum ch. 8–9

Baglione ch. 5 and ch. 7

**WEEK 7: COLLEIAL COURTS & U.S. COURTS OF APPEALS (MARCH 13)**

Cross, Frank B. 2003. “Decisionmaking in the U.S. Courts of Appeals” *California Law Review* 91(6): 1457–1515 (on D2L)

Summarize Cross for part of your literature review  
Activity: Collegial Court Simulation



*Justices Scalia and Ginsburg were frequently diametrical opposites in their legal and ideological views. Still, they were good friends and attended social events (opera performances) together. Justice Scalia frequently spoke in public making him one of the most quotable justices in the media. Similarly, Justice Ginsburg’s public comments elevate her to celebrity status, as her nickname on a popular blog suggests—[Notorious RBG](#).*

**WEEK 8: SPRING BREAK (MARCH 20)**

Spring break

**WEEK 9: JUDGES & JUDGE SELECTION (MARCH 27)**

Baum ch. 4–5

Pathways to the Bench (2011) (interviews):

[Hon. Ann C. Williams, U.S. Courts of Appeals for the Seventh Circuit](#)

[Hon. Virginia Kendall, U.S. District Court for the Northern District of Illinois](#)

**WEEK 10: DATA AND CASE SELECTION (APR. 3)**

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

First Amendment Cases in the U.S. Courts of Appeals (brief and discuss)



*Justice Sotomayor, first Latina to serve on the U.S. Supreme Court, swears in during her confirmation hearings. The Senate confirmed her (68—31) after considering her controversial statement, “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life.”*

**WEEK 11: FORECASTING DECISIONS (APR. 10)**

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

“Why the Best Supreme Court Predictor in the World is Some Random Guy in Queens” [available here](#).

“Algorithm predicts US Supreme Court decisions 70% of time” [available here](#).

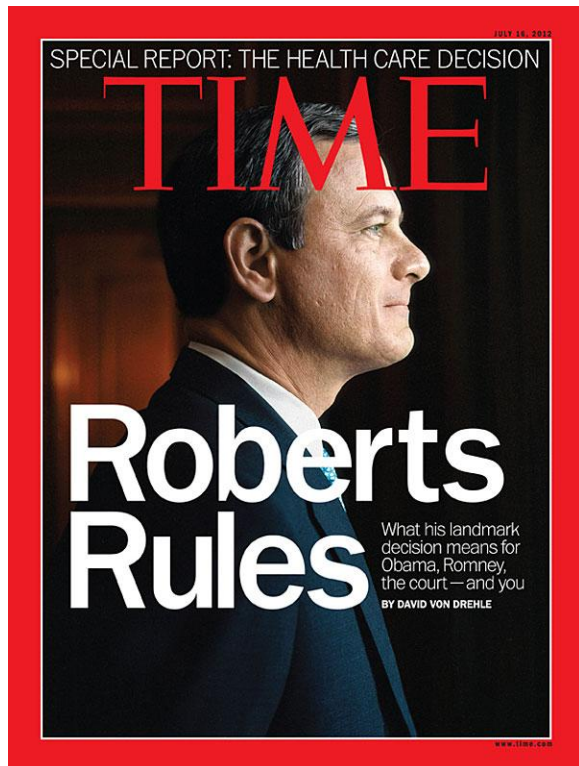
**WEEK 12: WRITING WORKSHOP (APR. 17)**

Baglione ch. 6 and ch. 9

Deadly Sins in Writing, Revision Circle (handouts)

**WEEK 13: SUPREME COURT—INNER WORKINGS (APR. 24)**

“Judicial Assistants or Junior Judges: The Hiring, Utilization, and Influence of Law Clerks” in *Marquette Lawyer* (Fall 2015) (on D2L)  
Liptak, Adam. 2015. “Locking in Votes and Doling Out ‘Dogs’: How Roberts Assigns Opinions.” *New York Times* (Nov. 9, 2015) available [here](#).



*Chief Justice Roberts received considerable criticism and praise when he sided with the Supreme Court’s liberal bloc to uphold the constitutionality of the Affordable Care Act (Obamacare). His decision caused legal and political analysts to examine more closely whether judges decide cases according to law or politics.*

**WEEK 14: CURRENT EVENTS & RESEARCH PRESENTATIONS (MAY 1)**

Students present research projects. I am also reserving a class period or two anticipating that we will watch some of the Supreme Court nominee’s confirmation hearings.

**WEEK 15: WRAP UP & ASSESSMENTS (MAY 8)**

**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.



*U.S. Court of Appeals for the Seventh Circuit: Map Obscurant*