

POL SCI 417: THE SUPREME COURT
(Satisfies the research experience requirement for the POL SCI Major)
Fall 2021 MW 3:30 – 4:45p BOL B92

Professor Sara C. Benesh

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Office Hours: Mondays and Wednesdays, 11a - Noon, and by appointment.

NOTE: We'll use CANVAS for this course – do everything necessary to gain access to it, and visit it soon!
<https://uwm.edu/canvas/>

Welcome to POL SCI 417 – You belong here!

We are diverse in so many ways, and this diversity is fundamental to an institution like UWM. By diversity, I mean the multiple ways that we identify ourselves, including but not limited to race, color, national origin, language, sex, disability, age, sexual orientation, gender identity, religion, creed, ancestry, belief, veteran status, or genetic information. Each of these identities shapes the perspectives we bring to UWM. I pledge to work to promote diversity, equity, and inclusion not only because such diversity fuels excellence and innovation, but also because I want to be part of the solution when it comes to a more just society. I am, of course, not perfect, but am fully committed to making UWM a campus community that embraces diversity and welcomes every single person who comes to call. Won't you join me?

COURSE DESCRIPTION

What do you know about the United State Supreme Court? Are you already a SCOTUS junkie? Or are you only vaguely aware of what SCOTUS means but are intrigued by this third, “least-dangerous” branch? Either way, for all of us, this course is designed to be a journey of discovery about this very public but also exceedingly secretive institution.

How will we learn about the High Court? We'll READ, we'll EXPLORE, and we'll SIMULATE! Considering the institution and its membership, we will learn about the justices and their behavior as well as the various steps taken by litigants seeking to obtain its attention. Our text will give us the introductory information we need and the selected peer-reviewed articles will dig deeper into our best empirical understanding of all of those things. And then, we will simulate all of it! At the end of the course, having learned about the Court, its justices, and its processes and after simulating case selection, brief submission, oral arguments, and opinion writing, we will consider the role of the Court in society and its impact as a co-equal branch of American government to see if any of it mattered!

In order to do all this, we'll develop some specific skills necessary to our tasks. First (learning outcome #1), you'll learn how to conduct legal research. Next (learning outcome #2), we'll facilitate growth in your ability to comprehend, apply, and evaluate empirical analysis of various Court processes. Finally (learning outcome #3), we'll work on oral presentation and writing skills, and we'll do most all of this in a way that promotes revision, improvement, and skill acquisition.

We will simulate the certiorari process (deciding to decide), the writing and submission of legal briefs (using legal research), the oral argument process (attorney pleas for a particular decision and justice questioning of attorneys), the conference process (discussing who wins and who loses and why), and the opinion-writing process (conducting legal research and drafting majority and minority opinions). Because of these simulations,

student participation and attendance are crucial and so are both required and included in your simulations grades (with the understanding that we all need some flexibility from time to time).

REQUIRED TEXT

The following book is required for the course and is available in the University ebookstore:

Baum, Lawrence. 2019. *The Supreme Court*. Thirteenth Edition. Washington, DC: CQ Press. (NOTE: There is a 14th Edition, and if you want to grab that one, that's totally fine. The 13th, which you should be able to find used, will be sufficient, however.)

OTHER REQUIRED READING

Other articles and book chapters will be made available via CANVAS and are noted in the course schedule. Each student will also do some additional outside reading about one of the current justices in order to further our understanding of the justices we'll portray in the simulations. (Details on requirements for this assignment will be discussed in a separate handout.). I strongly encourage you to **DO THE READING** so that we can have interesting conversations in class, and so that you can meet my content-based learning outcome (learning outcome #4)!

COVID-19

Of course, we all know this course is not occurring in regular times, despite our hope that it might be. For that reason, a few words on expectations regarding safety so that we can maintain our mostly face-to-face semester.

Panther Community Health and Safety Standards: UWM has implemented reasonable health and safety protocols, taking into account recommendations by local, state and national public health authorities, in response to the COVID-19 pandemic. As a member of our campus community you are expected to abide by the Panther [Interim COVID- Related Health & Safety Rules](#). These standards apply to anyone who is physically present on campus, in UWM-controlled facilities, or participating in a UWM-sponsored activity, and includes the following:

- **MASKS ARE REQUIRED IN ALL UWM facilities** (classrooms, labs, performance spaces, etc.): A student who comes to class without wearing a mask will be asked to put on a mask or to leave to get one at a mask handout station. Failure to do so could result in student discipline.
- **CHECK YOURSELF:** You should check daily for COVID symptoms by completing the self-check at <https://uwm.edu/coronavirus/symptom-monitor/>. Symptoms may appear 2-14 days after exposure to the virus and include fever, cough, or shortness of breath or difficulty breathing. See the [CDC's Website](#) for more information about COVID-19 symptoms.
- **UPLOAD VACCINATION CARDS OR SUBMIT TO WEEKLY TESTING:** UWM is hosting vaccination clinics on campus. Learn more here: <https://uwm.edu/coronavirus/vaccine-clinic/>. Learn about vaccination incentives or upload proof of your vaccination status here: <https://uwm.edu/coronavirus/vaccination-incentive-program/>. If you choose to remain unvaccinated, you'll need to submit to weekly testing. See: <https://www.doineedacovid19test.com/> and <https://uwm.edu/coronavirus/faqs/where-do-i-get-a-covid-19-test/>.

- **REPORT A POSITIVE TEST:** If you test positive for or are diagnosed with COVID-19 based on symptoms, you should complete this Dean of Students Office form: https://cm.maxient.com/reportingform.php?UnivofWisconsinMilwaukee&layout_id=4. By doing so, you will get information on resources, help UWM identify individuals you may have come into contact with on campus so that UWM can work with the local health department, and allow UWM to clean campus areas you visited as appropriate.
- ***Do not attend class if you have COVID-19, if you are experiencing symptoms consistent with COVID-19, if you have been in close contact with others who have symptoms, if you need to care for an individual with COVID-19, or have other health concerns related to COVID-19.*** Notify me in advance and we'll work together to get through your quarantine/illness. As your instructor, I will trust your word when you say you are ill, and in turn, I expect that you will report the reason for your absences truthfully.

Potential for Reversion to Fully Online Instruction: Changing public health circumstances for COVID-19 may cause UWM to move to fully online instruction at some point during the semester. UWM will communicate with students about moving to fully online instruction if the situation develops, and I'll make it as painless as possible for all of us.

OTHER BEHAVIORAL EXPECTATIONS

I also expect that you'll behave professionally in this class: that you'll arrive on time and attend all meetings (provided you are well); that you'll be prepared for each class and actively participate in discussion; and that you'll be a respectful and non-disruptive contributing member of our community. Right!? I also expect that you'll WORK HARD!! If ever you may miss an assignment or an exam, I cannot allow you to make it up unless you have contacted me IN ADVANCE to advise me of an issue, so please, be in touch with me. You can do so via email or phone as listed above.

ACADEMIC INTEGRITY

There is a lot of (excellent and inspiring) work in this class. AND you need to do it yourself! No form of academic dishonesty will be tolerated here. UWM's policy on Academic Misconduct can be found here: https://uwm.edu/deanofstudents/conduct/conduct_procedures/academic-misconduct/. It's important to me because using other people's work to get through the course means you leave without having achieved my learning objectives. And that makes me sad! (It also matters to me because I don't have much other than my intellectual property...)

To be sure you understand the policy and what academic dishonesty is, I've put together a CANVAS module and quiz on it, with help from some great faculty and staff at Ohio State and Simon Fraser University. How fun!! Please work your way through the module by the end of our first week together and achieve 100% on the quiz so that we're all on the same page. (This counts for 2% of your grade – and if you can't get 100% after the three allotted tries, let's talk!) Your successful quiz is your contract that you know what plagiarism is and how to avoid it.

SPECIAL NEEDS

Any students with special physical or learning needs should see me as soon as possible. Every effort will be made to accommodate you. See <https://uwm.edu/arc/> for more information.

OTHER UNIVERSITY POLICIES

Other University guidelines (including policies on sexual harassment, grade appeals, incompletes, and military call-ups) can be found here: <https://uwm.edu/secu/wp-content/uploads/sites/122/2016/12/Syllabus-Links.pdf>.

STUDENT RESOURCES

I know these are trying times to be a college student! But UWM has your back! Please see my CANVAS site for a page full of resources for you. Asking for help is NOT weak – you’re taking control of your health and well-being and that is STRONG.

GRADING

The course grade will be determined by your performance on two exams, two legal research exercises, a judicial biography project, and the several simulations including the written and participatory portions of each. Class attendance is expected.

| | |
|---------------------------|-----------------------|
| Plagiarism Quiz: | 2% |
| Legal Research Exercises: | 5% |
| Judicial Biography: | 10% |
| Midterm: | 10% |
| Final: | 15% |
| Certiorari exercise: | 17% (must be present) |
| Oral arguments exercise: | 18% (must be present) |
| Decision making exercise: | 23% (must be present) |

Each component is briefly detailed below with more information forthcoming. The Grading Scale I use is the standard one:

| | | | |
|----------|----|---------|----|
| 100 – 93 | A | 77 – 73 | C |
| 92 – 90 | A- | 72 – 70 | C- |
| 89 – 88 | B+ | 69 – 68 | D+ |
| 87 – 83 | B | 67 – 63 | D |
| 82 – 80 | B- | 62 – 60 | D- |
| 79 – 78 | C+ | 59 – 0 | F |

LEGAL RESEARCH EXERCISES

We will complete two research exercises, each worth 2.5% of your grade. We’ll go over the first one in great detail in class – you’ll just need to then go carry it out at home or in a campus computer lab. (Bring your laptop along and you may be able to largely complete it!) The second will be more independent. Given the importance of legal research to this course and given past course evaluations that stressed a need for more guidance on the process of research, you should approach these as valuable learning experiences. If you turn in the completed assignments and demonstrate every effort in each, you will obtain full credit on them. More information on these assignments is available via CANVAS. **(5% total)**

JUDICIAL BIOGRAPHY PROJECT

Each student will also complete a judicial biography, completed throughout the term (see dates on syllabus). This project will supplement what we learn in class by having students read more about the current justices

and then share what they learn about those justices with the rest of the class. (We'll also watch speeches and talks by each of the current justices, to get a greater feel for them.) **(10% total; participation required on dates listed in syllabus)**

THE EXAMS

The exams will be essay in nature, with some identifications (I give you a term, and you explain what it is and how it relates). The first is worth less than the second so that you might obtain an understanding of the sorts of questions I ask in the first to improve for the second. I also greatly encourage progress and if you improve, you will be rewarded. In order to allow for and reward that improvement, the final **IS CUMULATIVE. (Midterm 10%; Final 15%)**

CERTIORARI EXERCISE

As noted in the introduction, we will conduct a simulation of the certiorari decision stage, acting as attorneys, interest groups, clerks, and justices. Students will prepare cert petitions or amicus briefs as to cert as attorneys; cert pool memos as a clerk in the cert pool; markups as a clerk to a specific justice; and then students will vote on the disposition of cert petitions as a particular justice. All of these activities will be done using actual cases pending acceptance or decision by the U.S. Supreme Court. While the cert component has one oral component (wherein justices will vote on cert petitions), the grade is mostly based on the written materials including those listed above. All students will write either a petition or an amicus brief, all students will write and markup a cert pool memo, and all students will act as a justice in voting on certiorari. More information on the certiorari exercise will be available on CANVAS. **(10% petition; 3% cert pool memo; 3% participation; 1% cert memo markup; 17% total; participation required on October 27th)**

ORAL ARGUMENTS EXERCISE

The second simulation is of the oral arguments process wherein those students acting as attorneys and amici will argue their cases (chosen by the class from among those used in the cert exercise) to the Court and those acting as Justices will interrupt attorneys with questions (and then engage in a conference on the merits). Hence, the oral arguments grade is a grade based on preparation, role play, and oral presentation. More information on the oral argument exercise will be available on CANVAS. **(18% total; participation required on November 29 & December 1)**

DECISION MAKING EXERCISE

The final simulation exercise is designed to illustrate the process through which Supreme Court decisions are made. Students who acted as justices at the oral arguments stage will engage in conference deliberations and opinion writing at this stage. Given that justices are unlikely to make decisions without the written arguments of the attorneys, legal briefs and amicus briefs on the merits, written by students playing the role of attorneys, are also counted under this exercise. Hence, some students will write opinions as justices, others will write legal briefs on the merits as attorneys, and still others will write briefs amicus curiae as an assigned interest group. More information on the decision making exercise will be available on CANVAS. **(23% total)**

COURSE SCHEDULE

This schedule is tentative, and the instructor reserves the right to make changes as needed. Students are expected to read the assigned material prior to the class period during which the material will be discussed.

WEDNESDAY, SEPTEMBER 8: **WELCOME!**

MONDAY, SEPTEMBER 13: **THE COURT**

READ: Baum, Chapter 1

WEDNESDAY, SEPTEMBER 15: **THE JUSTICES**

(Add Deadline Tomorrow)

READ: Baum, Chapter 2

DISCUSS BIOGRAPHY AND CHOOSE JUSTICES

MONDAY, SEPTEMBER 20: **SELECTION AND CONFIRMATION**

READ: Confirmation Messes, Old and New; Farganis & Wedeking (CANVAS)

WEDNESDAY, SEPTEMBER 22: **SELECTION AND CONFIRMATION**

READ: Skim Sterns et al on Cert Procedure; Skim sample cert petition (SCOTUSBlog via CANVAS)

DISCUSS CERT SIMULATION AND ASSIGN ROLES

MONDAY, SEPTEMBER 27: **LEGAL RESEARCH**

READ: How to Shepardize; LEXIS wiki; Melone Chapters 1 and 2; Citing Cases Handout (CANVAS)

LEGAL EXERCISE #1 DUE, 11:59p (CANVAS ASSIGNMENT)

WEDNESDAY, SEPTEMBER 29: **THE CASES**

(Last day to drop without W Oct 1)

READ: Baum, Chapter 3; Sample Case, petition for writ of certiorari (CANVAS)

MONDAY, OCTOBER 4: **THE CASES** *(Happy First Monday!)*

READ: The Advice of Law Clerks; Organized Interests and Agenda Setting; Skim Sterns et al, Supreme Court Practice Chapters Chapter 4, 5; Sample Case, amicus brief for certiorari (CANVAS)

LEGAL EXERCISE #2 DUE, 11:59p (CANVAS ASSIGNMENT)

WEDNESDAY, OCTOBER 6: **THE CASES**

READ: Lawyers, Organized Interests and the Law of Obscenity; Repeat Players in the Supreme Court; Sample Cert Pool Memo; On Cert Pool Memos (CANVAS)

ATTORNEY PETITIONS FOR/AGAINST CERT DUE, 11:59p (CANVAS DISCUSSION)

BRIEFS AMICUS CURIAE REGARDING CERT DUE, 11:59p (CANVAS DISCUSSION)

MONDAY, OCTOBER 11: **THE CASES**

READ: Reading/Viewing on the OT 2021 Docket; Preview of Term, SCOTUSBlog List of Docketed Cases OT 2021; Colleagues' Attorney Writs and Amicus Briefs (CANVAS)

WEDNESDAY, OCTOBER 13: **THE JUSTICES**

In-Class Presentations on Chief Justice Roberts, and Justices Thomas and Breyer

MONDAY, OCTOBER 18: **THE JUSTICES**

In-Class Presentations on Justices Alito, Sotomayor and Kagan

WEDNESDAY, OCTOBER 20: **THE JUSTICES**

Presentations on Justices Gorsuch, Kavanaugh, and Barrett

JUDICIAL BIOGRAPHY PROJECTS DUE BY 11:59PM TO CANVAS (DISCUSSIONS)

MONDAY, OCTOBER 25: **THE JUSTICES**

CERT POOL MEMOS DUE BY 11:59PM TO CANVAS (ASSIGNMENTS)

TUESDAY, OCTOBER 26: *Mark-up a Cert Pool Memo as your justice's clerk, by 11:59p via Hypothes.is on CANVAS*

WEDNESDAY, OCTOBER 27: **CERTIORARI SIMULATIONS**

Come to class prepared to vote on cert, AS YOUR JUSTICE.
Review for Midterm

MONDAY, NOVEMBER 1: MIDTERM

WEDNESDAY, NOVEMBER 3: **DECISION MAKING**

(Drop deadline Nov 7)

READ: Baum, Chapter 4; Skim Petitioner Brief in Bostock; Skim Reply Brief in Bostock (CANVAS)

MONDAY, NOVEMBER 8: **DECISION MAKING**

READ: Bargaining on the U.S. Supreme Court; Marshalling the Court; Recusal memo; Listen to arguments in class (Transcript available on CANVAS)

DISCUSS ORAL ARGUMENTS SIMULATION, ASSIGN ROLES

WEDNESDAY, NOVEMBER 10: **ORAL ARGUMENTS & AMICUS CURIAE**

READ: Influence of Oral Arguments; Laugh Track; Lobbyists Before the U.S. Supreme Court; Sterns et. al on the Brief on the Merits and on Oral Argument; Briefs Amicus Curiae in Sample Case; Skim Guide for Counsel (CANVAS)

MONDAY, NOVEMBER 15: **INFLUENCE OF BRIEFS**

READ: Supreme Court and Opinion Content

WEDNESDAY, NOVEMBER 17: **CONFERENCE ON THE MERITS**

READ: Selections from The Supreme Court in Conference (CANVAS)

MONDAY, NOVEMBER 22: **OPINIONS AND OPINION ASSIGNMENT**

READ: Opinion Assignment on the Rehnquist Court; Opinions in Sample Case (CANVAS)

WEDNESDAY, NOVEMBER 24: Happy Thanksgiving! Enjoy a break.

MONDAY, NOVEMBER 29: **ORAL ARGUMENTS SIMULATION & CONFERENCE SIMULATION, COURT 1**

WEDNESDAY, DECEMBER 1: **ORAL ARGUMENTS SIMULATION & CONFERENCE SIMULATION, COURT 2**

MONDAY, DECEMBER 6: **POLICY OUTPUTS, IMPACT & POWER**

READ: Baum, Chapters 5 & 6

WEDNESDAY, DECEMBER 8: **POLICY OUTPUTS, IMPACT, & POWER**
READ: Why we Comply; Hollow Hope Critics; Opportunity and Overrides

MONDAY, DECEMBER 13: **SEPARATION OF POWERS, WRAP-UP, REVIEW**
READ: Semi-Constrained Court (CANVAS)
BRIEFS AND OPINIONS DUE BY 11:59P TO CANVAS! (DISCUSSIONS)

FINAL EXAM: WEDNESDAY, DECEMBER 22ND, 3P – 5P