Preliminaries

Overview and Course Goals
How do judges decide cases and why do they decide as they do? Answers (or in some cases implicit assumptions about the answers) to these questions play a foundational role in a wide variety of scholarly research topics including: the evolution of the common law, the normative desirability of judicial review, normative and positive accounts of statutory interpretation, the federal judicial appointment and confirmation process, criminal sentencing, and the functioning of appellate review.

This course is designed to help students answer the questions of how and why judges do what they do. To do this, we will spend a bit of time examining the intellectual history of the study of judicial decision making and we will also examine modern work dealing with topics of special interest to legal scholars and political scientists. In terms of focus, we will be primarily concerned with positive accounts of judging. Nonetheless, normative issues will be lurking in the background and we will, on occasion, think about the implications of positive scholarship for normative research programs.

Class Requirements
This course will be conducted as a seminar. Students are expected to come to class fully prepared to discuss the strengths and weaknesses of the assigned readings. Students are expected to read all of the assigned material well ahead of time, think about how the various pieces might fit together, and, if necessary, do additional research. Class attendance is mandatory. Please consult with me in advance if you cannot attend a seminar meeting for any reason.

At five times during the semester you will be required to write a 1-2 page reaction memorandum. These memoranda must be solely your own work. These memoranda should not be summaries of the assigned reading. Instead, they should assess the quality of the arguments and evidence, draw linkages between readings, and raise questions for discussion.

On January 19 you will receive, by lot, the sessions for which you are responsible for circulating a discussion memorandum. The memoranda will not be formally graded although they will count toward class participation. The memos will form the basis for class discussion. Please write these memoranda to the seminar, and email them to my assistant, Ida Ng (ing@law.berkeley.edu), before 4:00pm the Wednesday immediately before the seminar. Ida will distribute the memos to the class. You should plan to read these memos before the seminar meets.

I will base student evaluation on two components:

- **Essays.** Each student will write a 20-40 page essay over the course of the semester. This will count for 60% of the final grade. The topic of the essay can be chosen by the student, but requires the approval of the instructor. There are three types of essays students can choose to write:
Critical Literature Review. These essays will critically review a literature related to judicial decision making. The essays should contain a clear thesis, a discussion of what we know (and, perhaps, what we do not know), and the implications of what we know to legal practice. These essays might, also, contain a discussion of the normative implications of a particular literature.

Case Analysis. These essays will contain an analysis of a set of cases, typically in a single area of law, through the lens of one or more literatures related to judicial decision making. Students should carefully select cases that provide analytical leverage for the thesis of the essay.

Original Empirical Research. These essays will contain some original research conducted by the student. These should be written as research notes, that situate the research question within a literature, posit a clear research design, and—using existing or original data—conduct suitable statistical analysis.

If students have ideas about other types of suitable essays to write, please discuss as soon as possible with the instructor.

Each student is responsible for submitting a 1-2 page proposal to the instructor by February 23. I will then meet with each student between February 27 and March 9 to provide feedback and guidance. On or before March 22, each student is responsible for submitting a full outline of their essay. This outline should include citations to cases and/or the literature that will be referenced. I will provide written feedback on these outlines, and will meet with students as needed. First full drafts of your essays will be due on April 12. I will return them with comments no later than April 26. Final essays are due on May 10.

Essays should be double-spaced, with one-inch margins, using 12 point Times New Roman or Computer Modern fonts. Students can use either the Bluebook or American Political Science Association citation style. The content of the essay should be no longer than 40 pages. Footnotes, endnotes, tables, figures, and a bibliography do not count toward the page limit.

Class Participation. I will assign each student a class participation score at the end of the semester. These scores will count for 40% of the final grade.

I will not give incompletes in this course.

Office Hours and Availability
I will hold office hours on Wednesdays from 10:00am to noon.

Course Website
The course website is available via bSpace.

Required Books
There are no required books for this course. Instead, we will be reading journal articles from legal academics and social scientists as well as a draft version of a book manuscript from Barry Friedman and Andrew Martin. Most readings will be available via JSTOR and / or HeinOnline. This syllabus provides links to articles that are not found on either JSTOR or HeinOnline. It is the student’s responsibility to locate and download the required readings for each week.

Preliminary Schedule
The following is a preliminary schedule of course topics. It is a rough guide to what we will be covering and may well undergo some changes over the semester.
January 12: Course Overview

Optional Reading

January 19: The Role and Identity of the Judge

Required Reading
Friedman, Barry and Andrew D. Martin, (n.d.) Judicial Decisionmaking, Chapter 1, Section I. (available at course website)

Optional Reading

January 26: Law and Constraint

Required Reading
Friedman, Barry and Andrew D. Martin, (n.d.) Judicial Decisionmaking, Chapter 1, Section II. (available at course website)

Optional Reading
February 2: Ideology

Required Reading

Friedman, Barry and Andrew D. Martin, (n.d.) Judicial Decisionmaking, Chapter 1, Section III. (available at course website)

Optional Reading


February 9: Case-Space Models and Fact Pattern Analysis

Required Reading


February 16: Disagreement on the Bench

Required Reading


Optional Reading


February 23: Race, Gender, and Other Ascriptive Characteristics

Required Reading

Friedman, Barry and Andrew D. Martin, (n.d.) Judicial Decisionmaking, Chapter 1, Section IV. (available at course website)


Optional Reading


March 1: Collegial Courts

Required Reading


Optional Reading


March 8: Intra-Court Bargaining and Opinion Writing

Required Reading


Carrubba, Clifford; Barry Friedman; Andrew D. Martin; and Georg Vanberg. forthcoming “Who Controls the Content of Supreme Court Opinions?” American Journal of Political Science. (available at course website).

Optional Reading


March 15: Hierarchical Judicial Systems

Required Reading


Optional Reading


March 22: Legal Doctrine

Required Reading


Optional Reading


March 29: Spring Break (No Class)

April 5: Judicial Selection and Retention: Overview

Required Reading
Friedman, Barry and Andrew D. Martin, (n.d.) *Judicial Decisionmaking*, Chapter 2, Sections I and II (available at course website)

April 12: Judicial Selection and Retention: Independence vs. Accountability

Required Reading
Friedman, Barry and Andrew D. Martin, (n.d.) *Judicial Decisionmaking*, Chapter 2, Sections III and IV (available at course website)

Optional Reading

April 19: Normative Implications

Required Reading
Friedman, Barry and Andrew D. Martin, (n.d.) *Judicial Decisionmaking*, Chapter 1, Section V and Chapter 2, Section V (available at course website)