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Washington University in St. Louis  
School of Law

**Law 786S. Judicial Decisionmaking Seminar**

Fall 2010 Semester

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**Instructor**

Andrew D. Martin, Ph.D.  
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appointment [email Kate Hoops  
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schedule]

**Class Schedule**

Monday 3:00-5:00 PM  
Seigle 208

## Course Description

To understand what the law actually is in practice, and to understand how it evolves over time, it is necessary to understand how judges decide cases. The purpose of this seminar is to survey the social scientific literature on how judges make decisions. Topics include: theories of decisionmaking; judicial selection; constraints under which judges operate; the agenda and litigation process; collegial courts; intercourt relations; the separation of powers; and, the public. Course materials will be drawn from original published studies. The seminar will meet weekly to discuss the assigned readings. Students are expected to participate actively in the seminar discussion. Each student will be required to write a 1-2 page reaction memorandum four times during the semester. Throughout the semester students will research and write a paper, approximately 15 pages in length, on a topic agreed on with the instructor. Students are expected to turn in an outline, rough draft, and final version of the paper. Seminar attendance and preparation are required.

## Requirements and Evaluation

Class meetings will be conducted as a seminar. Students are expected to come to class fully prepared to discuss the merits or lack thereof of the assigned readings. This means reading all of the assigned material ahead of time, thinking about how the various pieces might fit together, and doing outside research, if necessary. Class attendance is mandatory. Please consult with me *in advance* if you cannot attend a seminar meeting for any reason.

At three times during the semester you will be required to write a 1-2 reaction memorandum. These memoranda must be your solely your work. On the first day of class you will receive, by lot, the sessions for which you are responsible for circulating a discussion memorandum. These 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, Kate Hoops (khoops@law.wustl.edu), before 9:00 AM the day of the seminar. She will distribute them via email to all of us. You should plan to read them before the seminar meets.

I will base student evaluation on two components:

- **Essays.** Each student will write a 15 page essay over the course of the semester. The topic of the essay can be chosen by the student, but requires 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 decisionmaking. 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 decisionmaking. 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.

Law students can choose which of the three essays they will write. Ph.D. students are required to perform their own original empirical research. 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 to me by September 27 via email a one or two paragraph description of the essay the student plans to undertake. I will, then, meet with each student on September 30, October 1, or October 4, to provide feedback and guidance. On or before October 25, each student is responsible for submitting in hard copy a full outline of their essay, including 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 in hard copy on November 17. I will return them no later than November 29. Final essays are due in hard copy on December 10.

Essays should be double-spaced, with one-inch margins, using Times New Roman font. Students can use either the Bluebook or American Political Science Association citation

style. The content of the essay should be no longer than 15 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 20% of the final grade.

For law students, grades will be assigned using the mandatory median (for seminars) required by the law school. I expect to use a symmetric distribution of grades around that median with a standard deviation of five unless I think a different standard deviation or allowing a skew better reflects aggregate performance in the course. In particular, if all student performance is excellent I am happy to have a heavily right-skewed distribution. Ph.D. students in Arts & Sciences will be graded separately, and will have no effect on the evaluation of law students. I will give no incompletes in the course.

## Readings

I have assigned original research in law and social science on each of our discussion topics. Unless noted otherwise, links to these articles, whether as encrypted PDFs, JSTOR links, or HeinOnline links will be posted on my course website located at:

<http://adm.wustl.edu/courses/jdm.php>

I will use this site to distribute other course content. I will also regularly use email to communicate with students in the course. Please check the course website and your email regularly. I will not be using the MyLaw or Telesis sites.

## Course Topics and Schedule

### Meeting 1. Organizational Meeting [8/30]

### Meeting 2. Empirical Legal Studies and Statistics Lecture [9/13]

Background: Lee Epstein and Gary King. 2002. "The Rules of Inference." *University of Chicago Law Review*. 69: 1-133.

### Meeting 3. Introduction I [9/20]

Book chapter to be distributed in hard copy. Barry Friedman will co-teach seminar.

### Meeting 4. Introduction II [9/21, 9:30-11:30, optional]

Book chapter to be distributed in hard copy. Barry Friedman will co-teach seminar.

**Meeting 5. The Attitudinal Model [9/27]**

C. Herman Pritchett. 1941. "Divisions of Opinion Among Justices of the U.S. Supreme Court, 1939-1941." *American Political Science Review*. 35: 890-898.

Robert Dahl. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law*. 6: 279-295.

Jeffrey A. Segal and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review*. 83: 557-565.

Andrew D. Martin, Kevin M. Quinn, and Lee Epstein. 2005. "The Median Justice on the U.S. Supreme Court." *North Carolina Law Review*. 83: 1275-1321.

**Meeting 6. Role and Background [10/4]**

J. W. Howard. 1977. "Role Perceptions and Behavior in Three U.S. Courts of Appeals." *Journal of Politics*. 39: 916-938.

James L. Gibson. 1978. "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model." *American Political Science Review*. 72: 911-924.

C. N. Tate. 1981. "Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions, 1946-1978." *American Political Science Review* 75: 355-368.

Christina L. Boyd, Lee Epstein, and Andrew D. Martin. 2010. "Untangling the Causal Effects of Sex on Judging." *American Journal of Political Science*. 54: 389-411.

**Meeting 7. Legal and Strategic Models [10/11]**

Tracey E. George and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *American Political Science Review*. 86: 323-337.

Wahlbeck, Paul J., James F. Spriggs, II, and Forrest Maltzman. 1998. "Marshalling the Court: Bargaining and Accommodation on the U.S. Supreme Court." *American Journal of Political Science*. 42: 294-315.

Mark J. Richard and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review*. 96: 305-321.

Friedman, Barry. 2006. "Taking Law Seriously." *Perspectives on Politics* 4: 261-76.

**Meeting 8. Circuit Courts [10/18]**

Richard L. Revesz. 1997. "Environmental Regulation, Ideology, and the D. C. Circuit." *Virginia Law Review*. 83: 1717-1772.

Frank B. Cross and Emerson H. Tiller. 1998. "Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals." *Yale Law Journal*. 107: 2155-2176.

Harry T. Edwards. 1998. "Collegiality and Decision Making on the D. C. Circuit." *Virginia Law Review*. 84: 1335-1370.

Richard L. Revesz. 1999. "Ideology, Collegiality, and the D. C. Circuit: A Reply to Chief Judge Harry T. Edwards." *Virginia Law Review*. 85: 805-851.

Cass R. Sunstein, David Schkade, and Lisa Michelle Ellman. 2004. "Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation." *Virginia Law Review*. 90: 301-354.

### **Meeting 9. Trial Courts [10/25]**

C. K. Rowland and Robert A. Carp. 1980. "A Longitudinal Study of Party Effects on Federal District Court Policy Propensities." *American Journal of Political Science*. 24: 291-305.

Judith Resnik. 1982. "Managerial Judges." *Harvard Law Review*. 96: 374-448.

Pauline Kim, Margo Schlanger, Christina L. Boyd, and Andrew D. Martin. 2009. "How Should We Study District Court Decision-Making?" *Journal of Law and Policy*. 29: 83-112.

### **Meeting 10. Selection [11/1]**

Byron J. Moraski and Charles R. Shipan. 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices." *American Journal of Political Science*. 43:1069-1095.

Micheal W. Giles, Virginia A. Hettinger, and Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly*. 54: 623-641.

Wendy L. Martinek, Mark Kemper, and Steve R. Van Winkle. 2002. "To Advise and Consent: The Senate and Lower Federal Court Nominations, 1977-1998." *Journal of Politics*. 64: 337-361.

Stephen G. Calabresi and James Lindgren. 2005. "Term Limits for the Supreme Court: Life Tenure Reconsidered." *Harvard Journal of Law and Public Policy*. 29: 769-877.

### **Meeting 11. Judicial Elections [11/8]**

Melinda Gann Hall. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *American Political Science Review*. 95: 315-330.

Melinda Gann Hall and Chris W. Bonneau. 2008. "Mobilizing Interest: The Effects of Money on Citizen Participation in State Supreme Court Elections." *American Journal of Political Science*. 52: 457-470.

*Caperton v. Massey*, 129 S. Ct. 2252 (2009)

Brennan Center. 2010. *The New Politics of Judicial Elections 2000-2009: Decade of Change*. <http://www.brennancenter.org>.

### **Meeting 12. Agenda Setting [11/15]**

Gregory A. Caldeira, and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review*. 82: 1109-1127.

Ryan C. Black and Ryan J. Owens. 2009. "Agenda Setting in the Supreme Court: The Collision of Policy and Jurisprudence." *Journal of Politics*. 71: 1062-1075.

Christina L. Boyd. 2010. "The Impact of Courts of Appeals on Substantive and Procedural Success in the Federal District Courts." Working paper.

**Meeting 13. Intra- and Inter-Branch Models [11/29]**

John A. Ferejohn and Barry R. Weingast. 1991. "A Positive Theory of Statutory Interpretation." *International Review of Law and Economics*. 12:263-279.

Gregory A. Caldeira. 1985. "The Transmission of Legal Precedent: A Study of State Supreme Courts." *American Political Science Review*. 79: 178-193.

Donald R. Songer, Jeffrey A. Segal, and Charles M. Cameron. 1994. "The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions." *American Journal of Political Science*. 38: 673-96.