


Often referred to as the workhorses of the federal judiciary, the U.S. district courts are the courts of first instance for most cases in the federal court system. In recent years, these ninety-four geographically dispersed trial courts have terminated over 350,000 civil and criminal cases per year (Administrative Office of the U.S. Courts 2013). And, for most litigants, district courts are not just the first court they encounter, but are also the last. While advancing a case to a higher court after a district court termination is often possible, appeals are rare (averaging 11%; Eisenberg 2004), and reversals of lower court decisions are even more rare. As one district court judge put it, “The justice stops in the district. They either get it here or they can’t get it at all” (Carp and Wheeler 1972, 361, quoting anonymous judge).

While undoubtedly important, studying district courts, particularly empirically, can be very difficult. Each of the district courts operates semi-autonomously, setting its own local rules and procedures and adapting to its own unique local culture of case types, political and economic factors, and work environment. Adding to the complexity of things, unlike appellate court cases, district court cases involve the long-term development of a case. This development requires repeated interaction of the case litigants, lawyers, and judges; many opportunities for the parties to negotiate and alter their strategies; and multiple interstitial judicial decisions. As Mather (1983, 243) once put it, for trial courts “the traditional model of court as a judge-dominated, formal adversary process of adjudication” does not hold.

With this in mind, this chapter seeks to provide an overview of where we are and where we are (likely) going in the study of U.S. district courts, including topics like filing district court cases, settlement and plea bargaining, and unique district court judgment constraints and considerations.

Selecting Into the U.S. District Courts

The criminal and civil cases that are filed in and disposed by U.S. district courts are but a small fraction of what could be. Many potential cases never find their way into court, or they are filed in state court instead. To truly understand the business and acorns of U.S. district courts, scholars have long recognized that we must also account for the highly discretionary filing decisions made by civil plaintiffs and criminal prosecutors.

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In the civil arena, Miller and Sarat’s (1980–1981) dispute pyramid continues to be an informative framework for understanding when civil disputes between two opposing parties will become civil cases filed in a trial court. Only when an individual has been aggrieved, chooses to communicate that grievance to the other party, receives resistance from his adversary, and fails to reach an informal compromise resolving the matter might we see a filed trial court lawsuit. In other words, the presence of civil lawsuits depends greatly on the prospective plaintiff’s decision, the responses received from the potential defendant(s), and the incentives and risk adversity of the actors (e.g., Sloan and Hsieh 1995).

Empirical work has also contemplated how civil litigants and lawyers, upon deciding to file a case, craft the content of their complaint. This includes, via network analysis, which causes of action are likely to be filed together (Boyd et al. 2013). Additionally, recent work examines how changing Supreme Court doctrine for civil litigation has led to heightened scrutiny for claims of relief and whether, as a result, the filed pleadings have changed (Hubbard 2013, Cecil et al. 2011; Engstrom 2013).

In the criminal context, federal prosecutors in U.S. Attorneys’ Offices, who are themselves partisan political appointees (Nelson and Ostrander 2015), hold significant discretionary powers and agenda control in deciding whether to bring charges in U.S. district courts and, if so, what charges to bring (Jacob 1983). As Gordon and Huber (2002, 349) put it, “the prosecutor’s power stems in large part from her role as gatekeeper in the criminal justice system. Judges, juries, and sentencing decisions are not accused to prosecute, and the prosecutor who at the outset of a criminal case selects those individuals who will enter the system.”

For example, O’Neill’s (2004) descriptive study of federal prosecutorial declinations from 1996 to 2000 indicates that the decision to bring charges is determined by the type of offense, the national and local policy priorities set by Congress and the Department of Justice, and the strength and quality of the evidence, among other factors. More recently, Whitford and Yates (2009) examined the decision of U.S. Attorneys to prosecute (or not) narcotics cases from 1980 to 1992 and found that presidential policy signals have a significant and positive effect on the choice to prosecute narcotics cases. As the authors conclude, “[i]t is evident that the implementation of the war on drugs involved the exercise of significant prosecutorial discretion” (129). Finally, in their study of federal prosecutors’ decisions to charge or decline individual immigration offenses in the U.S. district courts in California (Central, East, North, South) from 1997 to 2007, Apollonio, Lochner, and Heddens (2013) find that following September 11, 2001, prosecutors were less likely to decline to prosecute immigration matters.

Compromise Outcomes and Case Dynamics

Civil and criminal district court cases rarely go to trial today (Galanter 2004). In the 1960s, 12 percent of civil federal district court cases terminated during or after trial. By 2004, this number had fallen below 2 percent. Similarly, for criminal federal cases, the trial rate had fallen to below 5 percent by 2002 (from between 13 and 15 percent in the 1960s through early 1990s).

Instead of trials, most cases today are resolved through compromise—a settlement in civil cases and a plea bargain in criminal cases. The cases advancing to trial are the exception, involving “conditions that make negotiated settlements difficult or unattractive to achieve” (Baum 2013, 213). Despite having much in common, the literatures on civil settlements and criminal plea bargains have developed among distinct academic communities, with the former relying largely on legal and law and economics scholars, and the latter dispersed more among criminal justice and sociology scholars studying state trial courts rather than federal trial courts.

Political scientists have only on occasion weighed in on either area of district court compromise outcomes.

Civil Settlements

Depending on the issue area, federal district court cases can settle at a rate of 85 or 90 percent (Eisinger and Lasnitz 2009). As such, the importance of understanding the role that they play in civil litigation and when and why they occur cannot be overstated. Why is settlement such a common and appealing outcome for parties, lawyers, and judges following the filing of a civil lawsuit? Langbein (2012) captures the attractiveness well: “settlement of a civil dispute has material advantages over adjudication. Settlement is usually cheaper and faster; the court is spared the drudgery of adjudication; each party is spared the risk of a less favorable outcome; and neither party isigmatized as the loser” (661).

Lawyers, Litigants, and Civil Settlements

While settlement is unquestionably the most prominent outcome in civil litigation today, empirical and theoretical scholarly work has focused its attention on explaining what factors drive settlement’s likelihood to rise or decrease and when during the course of a case settlement is most likely to occur. Chief among the explanatory factors for civil settlement are litigants and lawyers. Because of their role and their presumably strategic consideration of how to proceed in a case, litigants and their lawyers seemingly have a huge impact in determining how their cases are resolved, both in terms of the method of the resolution and the winner (Gross and Syverud 1991). Indeed, the litigants’ and lawyers’ positions are far more salient, discretionary, and hands-on in district courts than they are in appellate courts (Kristiansen 2012).

These actors file the cases, control the discovery of evidence, motion for rulings on procedural and outcome-oriented activities in the case, and choose whether a case will settle or continue on to trial.

Pretz and Klein (1984) and Bebchuk (1984) famously examined the strategic behavior of civil litigants—and frequent settlements—under the threat of a potential trial verdict or other court-adjudicated outcome. Pretz and Klein (1984) theorized that civil litigants determine whether to settle depending on the expected costs of trial and litigation (including trial losses) and the amount of information that the parties hold about their potential for success if the case goes to trial. Unsettled cases are most likely to be those close cases where the competing parties hold “divergent expectations” about their likelihood of success at trial. Pretz and Klein (1984) famously predicted, and many scholars have since attempted to empirically test, that cases proceeding to trial should yield an approximately 50 percent likelihood of plaintiff success. In Bebchuk (1984), one litigant holds an “asymmetric information” advantage over his opponent regarding the likely outcome at trial. As a result, the advantaged party is likely to only pursue competitive settlements in those cases where his expected liabilities at trial are high.

In an effort to empirically reconcile these competing models of civil litigation, Waldfogel (1998) examines contract, civil rights, intellectual property, tort, labor, and prisoner petitions litigated in the U.S. District Court for the Southern District of New York. The empirical evidence is mixed: Waldfogel recovers plaintiff win rates that are consistent with Pretz and Klein’s expectations, but pretrial settlement patterns and timing that more closely mirror those expected by Bebchuk. Waldfogel also confirms something expected by both studies: “[t]he group of cases actually going to trial is a highly selected sample of filed cases” (474).
Later empirical work has provided insight into how the litigant-driven dynamics of civil litigation—from discovery to motions practice—can affect when and why certain cases settle. During civil litigation discovery, parties exchange information and learn about their case strengths and weaknesses (Farber and White 1991; Huang 2008). Some litigation discovery and information-exchange processes are likely to function more smoothly than others. Johnston and Waldofgal's (2002) study of civil litigation in the Eastern District of Pennsylvania indicates that repeated attorney interaction across cases increases the level of cooperation between the attorneys during discovery and affects settlement rates and speed. Buchman (2007) finds that defendants can drive discovery dispute outcomes. In particular, in his study of 1983-2003 Daubert rulings in tort cases, Buchman finds that district judges' ideologies have a strong influence on the likelihood of expert testimony admission. Liberal district judges are as much as 14 percent more likely to admit expert testimony than conservative district judges. While not directly linked to settlement likelihoods in the Buchman piece, it is not hard to make the connection between a district judge's effect on discovery and information exchange and whether the case will ultimately settle.

This information exchange between district court litigants can be facilitated in ways beyond discovery. For example, it can also take place through filed substantive motions, a topic that Boyd and Hoffman (2013) study. Using a database of district court cases filed from 2000 to 2005 and drawn from complaints containing claims seeking to pierce a defendant's corporate veil and impose individual liability, the authors' findings revealed that the mere filing of a substantive, non-discovery motion can propel cases toward settlement more quickly, even when the judge does not resolve the motion.

Viewed together, the literature in this area indicates an important role for lawyers and litigants in determining why and when settlements occur in civil litigation. Strategic considerations are a critical part of the settlement decision process. Those strategies are, unquestionably, informed by the information exchange that takes place between the attorneys and parties during the course of litigation.

**Judge and Civil Settlements**

While much of the scholarship on settlement focuses on the litigants and lawyers, a small but growing body of work acknowledges the potentially important role of district judges in influencing whether cases settle. While the decision of whether to settle and what terms to agree upon are ultimately in the hands of the civil litigants, "judges routinely . . . infuse themselves into the settlement process" (Schuck 1986, 337). Indeed, as Galanter (1985, 1) argues, settlement can be "encouraged, brokered or actively mediated by the judge." Federal Rule of Civil Procedure 16 even lists "facilitating settlement" as one of the express purposes of a case's pre-trial conference (Provine 1986).

How do district judges actively "involve" themselves in the settlement process? Among other mechanisms for doing this, judges can "meet with parties in chambers to encourage settlement of disputes and to supervise case preparation." (Resnik 1982, 377). For lawyers, initiating settlement talks may be interpreted as a sign of case weakness (Provine 1986). Thus, by initiating the encouragement of settlements, the district judge can help alleviate pressure on the attorneys. Similarly, these settlement-minded judges can provide an outsider's pragmatism in potentially appropriate settlement levels (Provine 1986).

While the empirical work in this area is limited, the studies that do exist provide some preliminary evidence of trial judges' potential influence on civil settlements. In studying personal injury litigation cases brought in New York state trial courts from 1974 to 1984, Spurr (1997) found that this judicial strategy is successful, with the cases settling more quickly when they have been referred to a settlement specialist during the course of the litigation. Boyd's (2013) study of four federal district courts' cases filed from 1996 to 2004 finds that the identity of the judge can affect the likelihood and timing of case settlement, with female-supervised cases from four district courts being more likely and more quickly to settle than male-supervised cases. Kritzer's (1986) study of state and federal trial judges' roles as mediators also reveals evidence of an indirect judge effect on case settlement. As his study indicates, there are a number of cases that eventually settle where judges ruled on important motions prior to case settlement.

We turn now to an original empirical analysis of the subject of federal district judges' possible influence on the likelihood of case settlement. As the above discussion reveals, district judges can influence and take an active part in encouraging parties to settle. To this end, district judges can mandate that parties attempt to settle their cases during the course of litigation. Two common and institutionalized methods of doing so are referring the case to a type of Alternative Dispute Resolution (ADR) or requiring the parties to participate in a settlement conference. When ADR is required, the parties must appoint a neutral mediator who will facilitate discussions between them. Generally these facilitators have no decision-making authority and frequently are not even required to hold a law degree (Ravinda 2005). For settlement conferences, a similar sort of discussion takes place, only this time in front of a court official, like another district judge or a magistrate judge. In either case, upon completion of the formalized negotiation discussion, the facilitator will report to the district judge on whether a settlement was achieved. If no settlement is reached, the case will continue.

As discussed above, these judicial efforts to encourage settlement can not only breathe realism into the case but also alleviate the pressure from the attorneys to force the issue themselves. As Ravinda (2005) put it, the settlement conference may be the first time both sides to the dispute are present, and attorneys may benefit from a judge's take on the contrasting presentation. In addition, lawyers want to engage in a process that creates movement. They want the judge to be an influence on the process, not merely a message carrier. The attorneys already know their case and the other side's case. What they often need is another perspective to add to this dynamic. (304)

As such, the presence of court-mandated settlement conferences or ADR, in a case should increase the likelihood of case settlement and decrease the chances of trial and non-trial adjudication. To empirically examine this, we turn to an original set of data that include a stratified sample of civil rights, personal injury, and business-related cases terminated in twenty-five federal district courts from 2000 to 2006. The dependent variable for this simple study is dichotomous, coded as 1 if the case settled and 0 if the case terminated in a trial or non-trial adjudication (late granted summary judgment motion or involuntary motion to dismiss). The primary independent variables for the study are ADR (dichotomously coded as 1 if the presiding judge referred the case to ADR, 0 otherwise) and settlement conference (dichotomously coded as 1 if the presiding judge mandated a settlement conference, 0 otherwise). Within the data, 19 percent of cases had one or more referrals to ADR, and over 25 percent of the cases had a settlement conference. The analysis also controls for the issue area (broadly, three dichotomous variables for civil rights, personal injury, and business, with personal injury disputes being the baseline category for the statistical modeling).
Turning to the statistical examination of whether the presence of ADR and settlement conferences increases the likelihood of case settlement, Table 15.1 reports the results of an estimated logistic regression with robust standard errors clustered on the assigned judge. As the results indicate, both ADR and settlement conferences have positive and statistically significant effects on the likelihood of case settlement.

To tease out the substantive impact of these results, the right column in Table 15.1 reports the marginal effects and confidence intervals on those effects. For cases with ADR referrals, the likelihood of settlement increases by nearly 0.15. And for cases with settlement conferences, the positive effect is nearly as large—just shy of a 0.14 increase in settlement probability. While the size of these results should not be attributed solely to the presiding district judge who referred the case to ADR or a settlement conference—after all, the content of the proceedings and the willingness of the litigants to negotiate were critical—but for the referral, these cases would have been around 15 percent less likely to settle. This analysis of district judges' roles in facilitating settlement, while brief and simple, may thus provide insight into a fruitful area of future district court analysis for political scientists. We return to the topic of other potential avenues for future research in this chapter's concluding section.

Criminal Plea Bargains

Compromise outcomes also dominate criminal cases filed in federal district courts. Indeed, as many as 95 percent of federal criminal cases result in a plea bargain (Administrative Office of the U.S. Courts, 2014), leading Landes (1971, 61) to note that "[i]n the folklore of criminal justice, a popular belief is that the accused will have his case decided in a trial. Empirical evidence does not support this belief."

While most criminal cases plea out, not all do. Rather, scholars have argued that the decision to plea bargain versus go to trial is a strategic one for prosecutors and defendants. Landes (1971, 61) argued that the decision is dependent on "the probability of conviction by trial, the severity of the crime, the availability and productivity of the prosecutor's and defendant's resources, trial versus settlement costs, and attitudes toward risk." At its core, deciding whether to plea or advance to trial involves calculations for both the defendant and the prosecutor: "[T]he prosecutor will accept a plea that exceeds the punishment his office could obtain by investing an equal amount of prosecutorial resources on other cases... . The defendant, who pays the price by surrendering his right to impose costs on the prosecutor by demanding trial and by surrendering his chance of acquittal at trial" (Easterbrook 1983, 208–209). Scholars often refer to this strategic plea bargain calculation as "bargaining in the shadow of the trial" (Bushway, Redlich, and Norris, 2014, 724).

In his empirical study of six urban state trial courts in 1978, Elder (1989) finds that as the evidence in a case makes the outcome at trial more certain, the likelihood of a plea bargain increases. However, Elder's work also indicates that as the stakes of cases are elevated, as measured via the severity of the crimes, plea bargaining becomes less likely.

Empirical evidence also confirms why defendants plead guilty: they "usually receive substantially shorter sentences than observably equivalent convicted or convicted at trial" (Bushway, Redlich, and Norris, 2014, 723). This is often referred to as a trial penalty. Smith (1986) and Bushway and Redlich (2012) find evidence of this trial penalty in their studies of the same 1978 plea bargaining data used in the Elder (1989) piece. Using more recent data, Abrams (2011) examines Cook County, Illinois, criminal cases initiated between 1997 and 2001. His results, to the surprise of many, indicated that "defendants who plead guilty receive sentences that are 14 months longer (214) than those going to trial (convicted and acquitted). The coding decision to include acquitted in the data and code them to having a sentence length of 0 has been highly criticized (Alsheker 2013). As Kim's (2015) reanalysis of the Abrams' data reveals, when only convictions are included in coded trial sentences, the trial penalty reemerges. In additional analysis of federal court sentencing, using U.S. Sentencing Commission data on federal criminal cases from 2006 to 2008, Kim (2015) again finds a substantial trial penalty, with plea bargain sentenced lengths being, on average, just 39 percent of post-trial conviction sentences.

Prosecutors, unquestionably, hold powerful advantages in plea bargaining negotiations. Prosecutors are repeat players in their local trial courts and will primarily favor long-term goals, policy, and reputation rather than single, one-shot victories in cases (Galanter 1974). While criminal defense lawyers are also often repeat players (Blumberg 1967), they face much lower pay, higher caseloads, and less agenda control than prosecutors. Criminal defendants often face additional disadvantages due to their limited bargaining power, poverty, and short-term mindset (Smith 1986).

District Court Judges and Jurors

While the above discussion has emphasized the important role for both litigants (broadly defined) and judges in U.S. district courts, there is no question that much of the federal trial court political science literature has focused primarily on the judges. This includes a detailed emphasis on who these judges are—from their background to characteristics—to how they behave and make decisions.

District Judges

Who are the federal district court judges? Goldman (1997), coupled with Goldman et al. (2001) and Goldman, Sloinick, and Schiavoni (2013), provides important insight into the backgrounds and demographics of the U.S. district judges appointed from Franklin D. Roosevelt's administration forward. At the time of appointment, most judges were around age fifty and were rated qualified or better by the American Bar Association. Many of these judges came to their district court with experience as a judge of some sort, a prosecutor, and/or a private practice attorney. Relatively few district judges attended Ivy League law schools (between 10 and 20 percent, per appointing presidential administration), a statistic that stands in sharp contrast to what is observed for federal appellate courts (Goldman, Sloinick, and Schiavoni 2013).

Most successfully appointed federal district judges share the same background: the party affiliation of their nominating president (Goldman 1997; Goldman et al. 2001). However, because of the strong norms

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*Table 15.1 Logistic regression results for whether a case settles. Statistical significance is represented with asterisk (*). p < 0.05 (two-tailed). Personal injury case are the baseline issue area.
of senatorial courtesy in the selection of federal trial judges (Giles, Hettinger, Peppers 2001; Rowland and Carp 1996) and information uncertainties built into judicial selection, it is likely that there is considerable variation in ideological preferences among many nominees. Because of this, many recent district court studies rely on the judicial common space (JCS) ideology score (Epstein et al. 2007; Giles, Hettinger, Peppers 2001) instead of, or in addition to, a measure of the party of the appointing president.2

Moving beyond partisanship and ideology, federal district judges are increasingly diverse. Kim and Randazzo (2012) report that through March 2012, 46 percent of President Obama’s most recent district court nominees were women and 21 percent were racial minorities.4

When it comes to voluntariness, leave a district court judgeship, scholarship tells us that lower court judges retire with a higher court appointment, for example, to the U.S. Courts of Appeals (Hansford, Savenah, and Songer 2010) influences district judgeships.

District Judging

Preferences and Other Judge Factors

While appellate court scholarship in the United States confirms an important ideological effect in much of judicial behavior, do district judges also make ideologically driven decisions? Understandably, this question has received a lot of attention. In his book on district courts as political gatekeepers, Lyles (1995, 2) explains why we might expect political behavior among district judges: “[T]he frequency and salience of district court policymaking, their gatekeeping role in the federal judiciary, the characteristics and attitudes of the individual judges appointed to these courts, as well as the dynamics of the appointment process itself, suggest a political nature and function that should be rigorously analyzed.”

Lyles’s (1995) survey research confirms that many district judges believe that their preferences and values inform their decisions. Fifty-eight percent of district judges responded “often” or “sometimes” when asked if their “personal attitudes and values affect their discretionary judgments.” That number rose to 75 percent when the same question was asked about other district judges’ judgments.

Some empirical evidence supports these expectations. For example, in their study of published federal district court decisions covering a wide range of issue areas from 1933 to 1977, Rowland, Carp, and Stitham (1984) find that federal trial court judges appointed by Democratic presidents are more likely to support criminal defendants than those appointed by Republican presidents. For similar work and findings, see Stitham and Carp (1987) and Rowland and Carp (1980).

Work by Rowland and Carp (1996) examining published Federal Supplement cases from 1933 to 1987 extended these earlier findings to include differences among judges in civil rights, civil liberties, economics, and labor-related cases, with Democrat-appointed federal trial judges ruling more liberally in each area. Using similar data, Johnson and Songer (2002) find that district judges’ ideological preferences are strongly linked to the party of their appointing president, but much less so to senatorial courtesy. In their study of published standing decisions made from 1985 to 1987 by federal trial court judges appointed by Nixon, Ford, Carter, and Reagan, Rowland and Todd (1991) also find politically driven district court behavior. Here, the authors observe that federal trial judges can use procedural rulings, such as those regarding whether a plaintiff has standing to sue, to exert their policy preferences.

Other district court work has found judicial partisan effects when examining criminal sentencing decisions. For example, in their study of sentence lengths from 1992 to 2001, Schuman and Tiller (2007) find that federal district courts with higher percentages of Republican-appointed judges impose longer sentences for criminal sentences. Notably, these disparities among judges’ sentencing (aggregated at the district level) were found even though applying U.S. Sentencing Guidelines mandatory during the years of the study. Fischman and Schuman (2011) largely confirm these results in their study of federal sentencing practices in district courts from 1991 to 2007. Finally, using district court data from 2003 to 2011, Epstein, Landers, and Posner (2013) confirm a modest sentencing-partisanship effect for data coded at the individual district judge level.

Importantly, scholarship on district courts has, at times, considered the politics of trial court judges in a way that extends beyond traditional party affiliation or ideological scores. Notably, Kritzer (1980) provides an analysis of trial court judges as a part of the Viet- nam War. Kritzer finds evidence that local and national political culture, along with the preferences of many political elites, affect district court judge sentencing behavior. Given these broader political influences, Kritzer properly notes that “[i]f the actions of trial judges are seen as political, the actions of trial judges are seen as political” (57). Similarly, Lloyd (1999), in his study of state-level political behavior patterns evaluated by federal district courts from 1964 to 1983, found that district judges were particularly likely to vote against a reapportionment plan when their political party did not control power and the reapportionment process in the state under review. For Lloyd, this is evidence of party affiliation, a concept that is different from judicial ideology.

The above-discussed findings stand in contrast to scholarship indicating that ideology and partisanship is generally not a strong predictor of federal trial judge decision making. It may come as no surprise to scholars of district courts and those who understand how very different trial court judges are appointed. Trial court judges are appointed by the state and local parties, which are often controlled by the political party in office. Partisanship is a stronger predictor of federal trial judge behavior than ideology or other factors, such as race or gender, which may be more important in district courts.

To this end, Ashenfelter, Eisenberg, and Schwab (1995) examine judicial decision making in three federal district courts in civil rights and prisoner habeas corpus cases filed from 1980 to 1981. Rather than utilizing only published opinions as data source, Ashenfelter and his colleagues rely on all district court filings. Focusing on district court characteristics, the authors seek to explain district case outcomes—including settlement. As the authors report, very few judges have a statistically significant effect on the case outcomes, but the judges do. As the authors argue, “[I]n the mass of cases that are filed, even civil rights and prisoner cases, the law—not the judge—dominates the outcomes. Judges may treat most cases as ones in which political interests are irrelevant or cannot change the outcome” (281).
other words, while the selection of district judges may be based on political factors, the findings appear to confirm, at least for these types of cases in these districts and years, that these political aspects do not "filter down to the mass of litigation" (281).

Keele et al.'s (2009) study of federal U.S. Forest Service litigation filed in federal district courts from 1989 to 2002 also finds no evidence of ideological or partisan behavior among district judges. This non-finding was true for both published and unpublished district court opinions (the authors did not study settled cases). Similarly, Zorn and Bowie (2010, 1213) found that when it comes to district judges, "ideological and policy-related influences ... are but two of several competing considerations, and in many instances not the most important ones."

Walker's (1972) study of randomly sampled, published civil liberty decisions from 1963 to 1968 finds no evidence that these trial judges' decisions are driven by their political party affiliation. King (1995) examines federal district judges' rulings in published opinions from the housing cases (1968-1969) and finds no evidence of partisan voting. Howard's (2002) study of IRS-taxpayer cases brought in the federal district courts from 1980 to 1988 similarly finds that judges' partisan affiliation does not affect the litigation rate or verdict award sizes. A similar story is true for Yarnold's (1997) study of district court rulings in religious freedom cases. Baum's (1980) article examining district court behavior in patent cases, and numerous other pieces studying district judge decision making. Of course, because peer review inherently favors statistically significant findings (on judge ideology or otherwise) (Franco, Malhotra, and Simonovits 2014), there may be many other unpublished district court behavior studies that will never make it into print.

Of course, ideology is not the only decision-making factor that district court scholars have examined. Rather, our work extends to geography, judges' community ties, and demographics, among many other things. For example, in their 1996 book, Rowland and Carper examine whether geographic factors affect district judges' behavior in published opinions from 1953 to 1987, revealing some differences based on judges in North versus South regions. Gillespie and Walker (1975), in their study of federal district judge decision making in school desegregation cases following Brown v. Board of Education, found that Southern district judges' degree of connectedness to their community affected the way that they made decisions. In particular, federal district judges were more vigilant in enforcing desegregation in remote, rural areas where they had little community linkage to the school in question.

Judicial diversity has also fascinated district court scholars from a substantive representation angle. In particular, the research question is often along these lines: do female (or racial minority) district judges make different decisions and behave differently from their traditional male (or white) colleagues? For trial judges, the research findings have been, unquestionably, mixed. Focusing first on district judge gender, Ashenfelter, Eisenberg, and Schwab (1996), in civil rights cases, Chew and Kelley (2009); workplace harassment cases, Sisk, Heise, and Morris (1985); religion-related, Sisk, Heise, and Morris (1985); U.S. sentencing guidelines cases, Kulik, Perry, and Pepper (2003); sex harassment, and Weinberg and Nielsen (2012); employment civil rights, all find little to no evidence of statistically significant differences between male and female district judges' decision-making behavior. However, some research has found differences between these judges, with the direction of the effect varying across studies (e.g., Collins, Manning, and Carp 2010; Schanzenbach 2005; Tiefe, Carp, and Manning 2010; Segal 2000; Walker and Barlow 1985).

In the context of district judge race, the empirical results have been just as mixed. A number of studies have found no difference between white and non-white district judges (e.g., Ashenfelter, Eisenberg, and Schwab 1995; Kulik, Perry, and Pepper 2003; Segal 2000; Walker and Barlow 1985) but some have found important differences (e.g., Chew and Kelly 2009; Cox and Miles 2008; Collins, Manning, and Carp 2010). How should we interpret the lack of empirical clarity in whether district judge ideology or background characteristics drive decisions? Increasingly, the literature seems to reveal that only in the exceptional cases, they publish opinions in salient and political issue areas or criminal sentences, do we see these judge-specific factors affect outcomes. It may be that a return to Gibson's (1978) role-orientation framework, originally applied to Iowa state trial judges, would be helpful. Gibson's theory is that the effect of judicial ideology for trial judges is conditional on the judge's role orientation, meaning that a trial judge's "attitudes are related to behavior only within the judge's role orientation allows it" (1978). It is very likely that modern data innovations and theoretical insights can also help.

Even more than that, though, is remembering the vast differences between trial judging and appellate judging and adjusting our theoretical framework accordingly. As Rowland and Carper (1996, 146) argued, "the primary day-to-day focus of the trial judge is to establish facts and fit them to laws interpreted by appellate courts rather than to interpret ambiguous statutes and constitutional clauses. Indeed, fact finding is not a discretionary part of the judicial role; it is, rather, what district judges do." Beyond fact finding, district judges are increasingly "managerial judges," where, as on the circuit courts' role highlighted, they are "not only adjudicating the merits of issues presented to them by litigants, but also are meeting with parties in chambers to encourage settlement of disputes and to supervise case preparation. Before and after the trial, judges are playing a critical role in shaping litigation and influencing results" (Resnik 1943, 375-377). Simply put, these fundamental differences between appellate and trial judges call for special consideration.

Hierarchical and External Constraints

Federal appellate courts are an ever-present influence in U.S. district court case dispositions. While district judges rest at the bottom of the federal hierarchy, Federal district judges' decisions can be subject to review and possible reversal by their appellate court brethren. Understanding the hierarchical component to district court judging has received a great deal of political science scholarly attention.

In their important work on judicial impact, Canon and Johnson (1999, 30) argue that "all appellate judges in the hierarchy must attempt to apply the relevant cases, interpreting the law as necessary to fit the circumstances at hand." But why is it that these trial courts must behave in a way that is so respectful to appellate court precedent? In a hierarchical relationship often described as governed by principal-agency theory (Randazzo 2008; Sogner, Segal, and Cameron 1994; Lindquist, Haire, and Songer 2007; Scott 2006; Boyd 2015; see Kim 2011; Nasi and Pardo 2013), federal appellate courts are able to monitor, punish, and incentivize their district court judges. Judicial review is largely through the threat of reversal. When a district judge's decision is overturned on appeal, this often creates additional work (Hettinger, Lindquist, and Martinek 2006; Scott 2006; Bound and Bound 2008). Appellate reversals can also negatively affect a district judge's reputation and likelihood of future judicial elevation (Camenaker 1994, Kiehn and Hume 2003)

Due to the threat of reversal, Baum (1997, 115) argues that trial judges "must balance their preferences against the preferences of the court; they sometimes take positions that diverge from their own preferences in order to avoid reversal that would move policy even further from their preferences. This, of course, is a form of strategic voting." The literature finds substantial support
that district judges are constrained by the judicial hierarchy. Using a strategic choice prohibitory model and data from the Court of Appeals Database from 1995 to 1996, Randazzo (2008) finds that district court judges do indeed often fear reversals. In particular, Randazzo’s results reveal that district judges anticipate the preferences of their courts of appeals superior in civil liberties and economies cases (but not in criminal cases) and adjust their behavior away from their personal preferences accordingly.

Other research has confirmed this district court judging constraint. In his study of published and unpublished district judge rulings on motions to dismiss in securities fraud action cases, Perino (2006) finds that district judges moderate their behavior in anticipation of an ideologically distinct circuit court. Epstein, Landes, and Posner (2013) and Schanzenbach and Tillar (2007) provide evidence that federal district judges’ sentencing practices are affected by whether their supervising circuit court is Republican or Democratic judge dominated. Interestingly, Choi, Gulati, and Posner (2012) reveal that district judges utilize strategic publication rates (fewer published opinions) as their ideologies move farther away from those of their reviewing circuit.

Boyd (2015) and Smith (2006) provide evidence that even when district judges make initial “mistakes” that lead to appeals and reversals, the hierarchical relationship between federal circuit courts and district courts is effective in the long term. In his 2006 piece, Smith examines reversals and appeals in the U.S. District Court for the District of Columbia. Smith finds that district judges with higher reversal rates begin to alter their subsequent decision making and that other judges within the district take notice of the reversals as well. And in her study of appeals, reversals, and remands yielding from twenty-nine federal district courts (2000-2004), Boyd (2015) finds that district judges conditionally alter their behavior after a federal circuit court reverses them.

For district judges, external constraints can, of course, come from other sources beyond their direct hierarchical superiors. For example, there may be a multiple principal relationship for district judges to consider. Beyond their above-discussed circuit court superiors, district judges may also be responsive to and influenced by the U.S. Supreme Court (Boyd and Spriggs 2005; see also, Lindquist and Haire 2006 on multiple principals more generally). In the district court criminal case context, scholars have frequently examined if and when district judges’ sentences were constrained by Congress and its delegates, the U.S. Sentencing Commission, through the U.S. Sentencing Guidelines (Tiede 2007, Tiede 2009, Fischman and Schanzenbach 2011).

The Iceberg

As the above discussion of research reveals, much of our empirical, quantitative knowledge about district courts and district court judging yields from published decisions—that is, those published in West Publishing’s U.S. district court case law reporter, the Federal Supplement. District court judicial opinions find their way into the Federal Supplement in one of two primary ways. One way is that the district judge forwards to West all written opinions that he or she recommends be reported. West’s editors may also supplement the Federal Supplement’s opinion contents beyond district judges’ recommendations (Resnik 1994). While the criteria for all Federal Supplement selections is not particularly transparent and many questions about consistency across judges, courts, and time exist, it is unquestionable that this publication’s contents, which serve as the basis for so many district court studies, represent very few of district judges written decisions (fewer than 10 percent, Rowland and Carp 1996). And those decisions that do make the page are, by design, a non-random, non-representative set of district court decisions.

With such a small and non-random set of district judge decisions within its pages, why has the Federal Supplement dominated as the source of empirical U.S. district court research? Two particularly compelling reasons emerge. First, the Federal Supplement opinions are, and have been for many years, readily available electronically and through law library print sources. By contrast, unpublished district court opinions can be very difficult and expensive to find (Dolbear 1969; Sorensen 1988). Prior to the federal electronic court record revolution of the mid-2000s, scholars wanting to study the universe or a sample of unpublished district court decisions would have to go through documents directly from the paper files in individual courthouses. Today, most federal district court cases mandate electronicocketing and opinion availability (Kim et al. 2009), but even with this movement toward near-universal decision availability, historical unpublished opinions are still difficult (if not impossible due to archiving and destruction of court archival records, Taran 2011) to track down and study.

Second, many scholars argue that the Federal Supplement’s non-random population of published cases is the correct population for many political science studies. Manning (2003, 77) put it like this: “published cases tend to be those in which precedent was limited or unclear, facts were conflicting, or the issues involved were unusual. It is these cases that provide the greatest latitude for judicial decision-making.”

This extensive reliance on the Federal Supplement and published federal court opinions has spawned a number of empirical studies seeking to examine the implications of the research design decisions and understand the differences between district court decisions designated as published and unpublished. For example, Rowland and Carp (1996) dedicate a chapter of their district court book to this topic. To do this, they focus specifically on Detroit, Michigan, and Kansas City, Missouri, federal trial courts. Their results for these districts indicate that outcomes in unpublished opinions were more “liberal” than those in unpublished opinions and that prestige of the district court was associated with more dispositional parity appointment effects; whereas leniency in unpublished opinions were not salient in unpublished opinions than in published opinions. Sorensen (1988) finds, in comparing former district court cases that were appealed into the appeals of appeals, that appealed unpublished district court opinions were not, universally speaking, “trivial or consensus cases” (213). He reveals, among other things, that 60 percent of appeals reversals of district courts came of unpublished opinions, that courts of appeals judge voted ideologically in cases resulting from both published and unpublished district court cases and that only half of the cases eventually getting to the U.S. Supreme Court had published opinions, while in the district courts. Using appellate court data similar to Sorensen’s, Swenson (2004) modeled the decision of a district court judge to publish his opinion. She found that judges’ decisions to publish are guided, at least minimally, by the official publication criteria (“genera precedentiae value”), but that those publication decisions were not ideologically motivated by individual judges.

Olson’s (1992) study of terminated cases in a Minnesota district court reveals very distinct publication rates across different areas of law, a result that contributed to her conclusion that “the process of reporting district court cases makes published cases a questionable sample for social science research” (795). Likewise, in their study of EPA environmental litigation in federal district courts, Ringquist and Emmert (1999) observe some differences between published and unpublished decisions, including higher civil penalties in the former.

In their classic study on this topic, Segalman and Donohue (1990) examine all filed Northern District of Illinois federal district court cases from 1981 to 1983 classified as employment or civil rights disputes, along with a random sample of similar disputes from six other federal district courts. Among their findings, the authors reveal that publication rates among district
courts vary drastically, with large caseload districts publishing more frequently. They also find important differences in the cases published opinions and those that do not. “The published cases tend to be longer, more complicated, more heavily concentrated on newer areas of the law. They also seem to include a different mix of plaintiff occupations, to proceed at a different pace through the legal system, and to end in different kinds of outcomes” (Stieglitz and Donohue 1990, 1156).

As civil litigation lawyers know well, district judges often decide key matters, like important discovery motions, without written opinions. In their study of cases filed in 2003 in four federal district courts, Hoffman, Isenman, and Lidicker (2008) found that only 3 percent of judicial actions in the cases had a written opinion. By focusing their research design first on district court case docket sheets rather than on published opinions, Hoffman and his co-authors were able to reveal every judicial decision rather than every opinion published or not.

What are the U.S. district court research design implications from all of this? The overall state of the literature seems to suggest that “published district court opinions cannot be taken as representative of all district court opinions nor assumed to capture all of the important policy-making decisions” (Kim et al. 2009, 98). Ringquist and Emerett (1999, 11) argue that “[s]trong continuity to focus on published case decisions exclusively, judicial scholars are not only overlooking a rich source of additional information, but may in fact be drawing conclusions regarding judicial behavior that do not accurately describe the motivational forces behind the majority of judicial decisions.” Siegelman and Donohue (1990, 1137) also caution that “[r]ather than ignoring the issue of representativeness or relegating it to a footnote, we want to urge scholars and/or consumers of research to think more carefully about the kinds of biases introduced by concentrating on published opinions.” Doing otherwise is, as Siegelman and Donohue’s article’s title suggests, like studying and drawing conclusions about an iceberg simply by looking at its tip: incomplete, possibly misleading, and potentially very dangerous. However, even Siegelman and Donohue (1990, 1166) are careful to note that their work is “certainly not advocating the abandonment of research using published opinions,” but rather just cautioning scholarly work that only study opinions to avoid generalizing to all cases or broader social phenomena.

And Beyond

With but one chapter in this *Handbook of Judicial Behavior* dedicated to federal trial courts, it is impossible to fully treat every relevant district court subtopic researched through the years. Still a number of other important works have studied other aspects of the U.S. district courts and the actors involved in and interacting with them and are worthy of mention here.

Article III appointed federal district judges are not the only judges in district courts. Rather, magistrate judges conduct a number of very important roles in civil and criminal cases, such as issuing search and arrest warrants, conducting initial-appearance proceedings and detention hearings, hearing dispositive motions and recommending actions to the district judge, conducting civil trials at the consent of the litigants, and presiding over settlement conferences (Guasti, Knight, and Levi 2016; Pro 2016). Magistrate judges are appointed for (renewable) eight-year terms and frequently serve upwards of twenty years before leaving their position (George and Yoon 2016). Recent work has provided modest empirical evidence that these judges are constrained by their supervising district judge colleagues in the decisions that are made in the “report and recommendation” context and when serving as the presiding judge over a civil case by the consent of the parties (Boyd and Sievert 2013). Additionally, magistrate judge-supervised cases take substantially longer to terminate than those assigned to a district judge, a result that may be due to differences between district judges and magistrate judges but could also be attributed to underlying differences between the types of cases and the non-random assignment process for magistrate judges (Boyd 2016; King, Chessman, and Ostrom 2007).

Recent work has also explored instances where district judges serve as appellate judges. This includes the many times where district judges temporarily serve as judges, or have been appointed to the U.S. courts of appeals. Burdick and Distefano (2001) report that while they often sit on circuit court merits cases (approximately 1 in 5 decisions have a district judge), district judges also adopt a low-profile judicial style during their appellate court temporary visit. Collins and Martinez (2010) also find that designated district judges are more susceptible to workload than permanent circuit court judges.

In addition to their work serving on an appellate court by designation, district judges also have occasional opportunities to conduct appellate review within district courts. This type of judicial review primarily happens in two circumstances: when a party appeals their federal administrative agency adjudication outcome into the federal courts and when a party appeals a federal court bankruptcy ruling. Verkuil’s (2002) descriptive work finds that federal district court judicial review of Social Security Administration adjudications leads to a reversal rate of the agency of about 50 percent (from 1991 to 2000)—a number that is much higher than anticipated for appellate court review using a deferential standard of review. Howard and Brehm (2014) find that conservative district judges are more likely to favor businesses (whether as debtor or creditor) than individuals in these bankruptcy appeals.

Farhag (2010) examines the factors that explain what caused Congress to enact statutory private litigation incentives from 1887 to 2004. As his results indicate, during times of legislature-executive branch conflict, Congress increases its encouragement for private litigation as an effort to enforce regulations and laws. This, of course, has real implications for federal trial courts. In other work on the interplay of trial courts and Congress, Greenfield (2013) finds that Congress frequently grants jurisdiction to the U.S. district courts in its laws.

Concluding Thoughts: Moving Forward in the Study of U.S. District Courts

As the above discussion reveals, much has been accomplished in the study of federal district courts. At the same time, the bulk of the literature reveals how much is left to examine in future scholarship. The business of U.S. district courts is complex and dynamic. Much more so than with appellate courts, federal trial courts involve the interaction of judges, litigants, and lawyers. Each actor holds multiple decision-making opportunities per case that can shape outcomes and affect winners and losers. Our resulting research designs are complicated and the data are hard and expensive to get.

However, the importance of overcoming these hurdles is exceptionally meaningful both for understanding the decision making that takes place in these trial courts and for appreciating the broader influence that these courts have on the rest of the federal judicial hierarchy. As such, let us hope that future scholars will flock to the study of these important courts. District court topics are of additional empirical and theoretical research include (but are certainly not limited to) the repeated interactions of judges, litigants, and lawyers in civil and criminal cases; how judges influence the likelihood of settlement and plea bargains; and how and when precedent (or the lack thereof) or external forces like appellate courts, Congress, the president, or public opinion affect district judge decision making.
Notes
1 This coding of the dependent variable excludes dispositions that do not fit within these categories. The excluded termination methods include, for example, default judgments and where the plaintiff voluntarily abandons or dismisses the case, transfers, and remains to state court.
2 The statistical results below indicate that civil rights cases are less likely to settle than personal injury cases. This is consistent with settlement literature finding vast differences in settlement probabilities by issue area (Chermont and Eisenberg 2002; Chermont 2009).
3 These scores are available online (http://elboyd.net/ideology.html) for district judges appointed from 1937 to 2014.
4 The data used for these projects, now extended through 2012, will soon be archived online at the Interuniversity Consortium for Political and Social Research (ICPSR) (Carp and Manning 2015).
5 West suggests that judges recommend publication for all opinions that are "of general interest and importance to the bench and bar, such as those that deal with an issue of first impression; establish, alter, modify, or explain a rule of law; provide a review of the law; involve unique factual situations; present a unique holding; or involve newsworthy case." West's Submissions Guidelines are available at https://legal solutions.thomsonreuters.com/law-products/practice/government/custom-publish-guidelines.
6 Keefe (2012) provides an excellent overview of sources and research for conducting this type of district-based court research.
7 Howard and Bazelton (2014) note, some circuits use specially created Bankruptcy Appellate Panels to hear bankruptcy appeals instead of single district judges.

References

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