

She'll Settle It: Judges, Their Sex, and the Disposition of Cases in Federal District Courts

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January 2007

Abstract

This article examines the influence that judges have on the method by which cases are terminated in federal district courts. By focusing on four district courts and estimating my results with multinomial logistic models, I find that the sex of a judge has an effect on how cases are disposed of. The findings reveal that female judges, regardless of the district that they serve in or the type of case that they are hearing, are more likely to dispose of cases by settlement than their male colleagues. These results provide a significant addition to the literature that argues that females behave differently than males while serving on the judiciary and should also provide insight into judicial decision making at the case management stage in trial courts.

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I INTRODUCTION

Very little empirical evidence exists about the behavior of trial judges beyond their votes on the merits of cases. We can begin to fill this gap by examining judicial behavior while judges are managing cases in district courts *before* the cases are terminated. The role of the judge on federal district courts provides many opportunities for diverse activities — from presiding over trials, to hearing and ruling on pre- and post-trial motions, to conferring and advising the parties in the stages before a trial takes place. Since judges make many decisions and take many actions before cases yield an authored judicial opinion, examining the role of the judge in these early stages of a case may provide useful information on the total package of judging. One such way to do this is to examine the way that cases, after being assigned to individual judges, are disposed of, whether this be by settlement, non-trial adjudication, or trial.

Understanding judges and the impact that they can have over cases can provide us with a lot of insight into many of our questions regarding judicial decision making. One such area regards the differences between male and female judges while serving on the bench. Existing theory posits that females speak in a “different voice,” possess different backgrounds, develop different socialization skills, and have different ambitions than males and that these differences should have an impact on judicial decision making (Gilligan 1982; Sherry 1986; Songer, Davis and Haire 1994). However, given the notable selection of cases for litigation as well as the even more hefty censoring that takes place for cases to advance to trial or even appellate courts, it is no surprise that differences in the decisions of judges, based on their sex, have rarely been found by scholars. By examining the role of the sex of judges in the case management stage in federal district courts, an area heretofore unstudied by scholars looking for differences between male and female judges, we can better understand the role that a judge has in shaping the resolution of an individual case. Based on the existing theory regarding the “differences” between male and female judicial behavior and

our growing understanding of the role of judges in the case management stage of cases, I predict that female judges will be more likely to dispose of their cases by settlement than male judges.

II JUDICIAL DECISION MAKING ON DISTRICT COURTS

Federal district court judges are unique and understudied actors in judicial politics. Like U.S. Supreme Court and U.S. Courts of Appeals judges, district court judges are nominated by the president and confirmed by the Senate. As Article III judges, they have life tenure. However, unlike their brethren on the Courts of Appeals and the Supreme Court, district court judges almost exclusively decide cases on their own (and not on a panel with other judges). Additionally, district court judges preside over the filing of cases, and where applicable, the trial stage of cases. The district court judge thus has the potential to be a mediator, a fact-finder, a law-applier, and a law-creator with enormous discretion in how a case develops and is resolved. This role allows the district court judge to have a frequently unrecognized ability to formulate and shape wide-reaching judicial agendas and policy in a way that is often only credited to appellate judges (Mather 1995). To further bolster his importance, the district judge's actions and conclusions are generally given a tremendous level of deference by reviewing courts.

III THE DISPOSITION METHOD OF CASES AND THE ROLE OF THE JUDGE

A Disposing of Cases

Broadly speaking, cases can be disposed of in three very different ways: trial, non-trial adjudication, and settlement. Cases that are settled disappear. Save for the parties directly involved, they have no further policy impact and create no law. Alternatively, cases disposed of by non-trial adjudication (like, for example, summary judgments) may be appealed — but they will either be completely terminated without a full proceeding or will end up back at

the trial court for a continuation of trial proceedings. Finally, cases that are terminated via trial are highly adversarial and have potential to warrant a written opinion. It is these cases, along with some non-trial adjudications that terminate cases, that are the subject of most empirical scholarly work on district courts.

In addition to the differing results for individual cases that are disposed of by these three methods, the overall system of litigation in our country is impacted by the choice of disposition method in cases. Despite the fact that the structure of federal district courts and the constitutional protection (life tenure) and basic role of district court judges has remained constant for quite some time, the occurrence of trials in civil cases in federal district courts has undergone a monumental decline over the past forty years - dropping from nearly 12 percent of filings resolved by trial to under 2 percent (Galanter 2004). Coined as the “vanishing trial,” scholars studying this phenomenon have found that this decline has occurred across all categories of cases and that it has occurred despite a growth in both the number of civil case filings and dispositions and the overall legal machinery of the country (Galanter 2004; Hadfield 2004). However, little is known about what it is that is causing this decline. Hypotheses such as increased workload, changing case compositions, increased case complexity, a relative decrease in court resources, and a growth in alternative case resolution methods abound (Galanter 2004; Schlanger 2006), but little rigorous work has helped confirm or deny the relevancy of these potential explanations. It is because of this lack of certainty that greater exploration into this federal district court phenomenon is needed.

B The Importance of the Judge

Much of the literature in this area utilizes formal modeling and focuses on the role of the litigant in determining the disposition method of a case (Priest and Klein 1984; Spier 1992; Waldfogel 1998; Bebchuk 1984). These studies focus on litigants because these actors determine stakes, posture themselves, and evaluate their odds of success. Although the focus

on these actors make sense, especially for formal theorists, the result is that we know very little about the part played by judges in disposing of cases by a particular method. Given the design of federal district courts, it is very likely that judges, as case managers (Resnik 1982), are actively involved in controlling how cases terminate. Indeed, judges are not simply active in cases during bench trials. Rather, their activities include interacting with the parties and presiding over case-related matters, all events that occur well before the case actually reaches a trial.

What does the judge's role look like in the different stages of district court cases that can lead to case termination? Trial work may be the judge's most salient job — it is during this event that he publicly presides over a case and, at times, determines law and facts. In non-trial adjudications, a party (typically the defendant) motions the judge for a pre-trial disposition against the other party. The judge evaluates the merits of the motion under a standard that is very deferential to the non-moving party, and if he finds for that party, the case is terminated.

Many believe that judges, as case managers, also can have an active part in terminations by settlement. Resnik (1982) notes that judges “meet with parties in chambers to encourage settlement of disputes and to supervise case preparation.” Galanter (1985) argues that settlement negotiations are often “encouraged, brokered or actively mediated by the judge.” Given this potential role, district court judges can actively communicate with the parties as to the status of the case, particularly in cases that are not disposed of almost immediately upon being filed. If a judge so chooses, he can encourage settlement. He has many opportunities to do so, including during the pre-trial conference(s). During this process, the judge can ask the parties if settlement has been actively considered and he can provide signals to them as to the relative strength of each party's position — information that is invaluable when parties are negotiating. Thus, it appears that judges can very actively steer cases toward termination by settlement; however, acting in such a manner seems to be largely discretionary, something that is less likely to be the case for terminations by

non-trial adjudication and settlement.

With this background on how judges influence disposition methods, it is easy to imagine that certain judges have case management preferences that go on to influence the way that a case is disposed of. For example, judges with experiences, background, or preferences that lean towards negotiation and non-adversarial methods of handling disputes may more actively encourage parties to settle than those without that same experience. Because of this possibility, I examine here one portion of the theory that judges may influence case disposition methods: how a judge's sex impacts a case's disposition method.

IV THE ROLE OF JUDGE SEX IN DETERMINING CASE DISPOSITION METHOD

A number of studies have examined the impact that a judge's personal characteristics have on the decisions that he or she makes. In particular, many of these scholars have inquired whether or not female judges *decide* cases differently than their male colleagues. Although these studies have yielded mixed results, they also have provided a wholly incomplete picture of the impact that a judge's sex might have on the cases that are assigned to him. Indeed, before we turn to the question of the impact of judges on case outcomes, we should ask whether female judges, while operating in the procedural and agenda-setting landscape of a case also behave differently than their male colleagues.

A The Theories: Why Women Might Behave Differently

Existing theories on the behavior of male and female judges may help us to clarify our expectations as to whether female judges should dispose of cases differently than male judges. Two theories, both of which are generally consistent with one another, provide an appropriate background. According to Gilligan's "different voice" theory (Gilligan 1982), males solve problems through logic and reason and concern themselves with rights, rules, and law while females approach problem solving through personal communication with those

that they are in a relationship with and concern themselves with responsibility and obligation (see also Sherry 1986; George 2001; Resnik 1988; Karst 1984).

Females may also behave differently than males because they have different social and professional backgrounds from males (Songer, Davis and Haire 1994; Slotnick 1984). Under this theory of different backgrounds, women's "experiences as relative outsiders in the legal profession [may] have helped shape independent or distinctively empathetic perspectives" (Brudney, Schiavoni and Merrit 1999) and that even more generally, their social and cultural experiences have made them more sensitive while serving in the judiciary (Martin, Reynolds and Keith 2002). Thus, whether it be because of different problem solving and communication techniques or different social and professional backgrounds, these theories provide an excellent start for a theory on why female judges might dispose of cases in a different fashion than male judges.

B The Reality: Women in the Judiciary

President Carter's presidency was marked by a concerted effort to appoint diverse judges to the federal bench. Prior to the Carter Administration, only eight female judges had been appointed to an Article III court. During his four years in office, Carter placed 41 female judges on the federal bench, a number that accounted for nearly 16 percent of all of his appointments. Although subsequent presidencies also appointed more female judges than the pre-Carter era administrations, not all were as deliberate in making diverse appointments as Carter. Approximately 8 percent of Reagan's appointees to the federal bench were women, as were 19 percent of G.H. Bush's and 30 percent of Clinton's.¹ Overall, today's federal judiciary is composed of slightly under 20 percent female judges, with the district courts just over 17 percent. As can be seen in Figure 1, the gendered composition of the different federal district courts, by circuit, ranges from 10 percent females to over 25 percent females,

¹All data on appointments were compiled from the Federal Judicial Center's Biographical Directory of Federal Judges, available at <http://www.fjc.gov>.

depending upon the district examined.

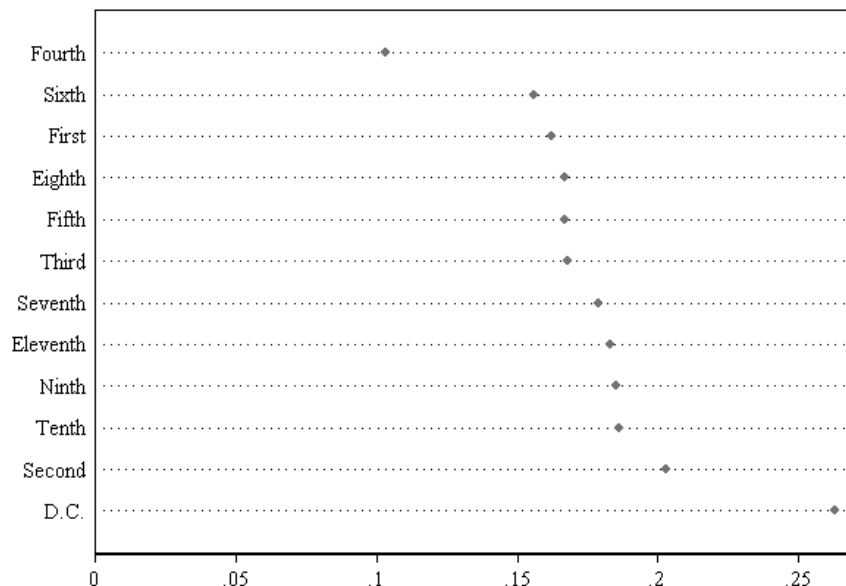


Figure 1: Proportion of district court judges that are female, by the circuit of the district court. The data were compiled by the author from the Federal Judicial Center’s Judicial Biographical Directory and represent sitting female district court judges as of April 2006.

Given these data on female representation in the federal judiciary, what do we know about female decision making? In other words, does the presence of these female judges makes a difference in the behavior of federal judges. A number of empirically minded scholars have taken up the question of whether or not female judges decide cases in a fashion that is systematically different from their male colleagues.

The results, both for Courts of Appeals and for district courts, are mixed. Some find that in cases falling in subject areas like sexual discrimination and sexual harassment, female judges are more likely to rule in a decidedly “feminine” fashion (Peresie 2005; Crowe 1999; Songer and Crews-Meyer 2000). Others find no statistically significant difference between the voting of female and male judges (Westergren 2004; Songer, Davis and Haire 1994; Schneider 2002; Ashenfelter, Eisenberg and Schwab 1995; Sisk, Heise and Morriss 1998; Kulik, Perry and Pepper 2003; Gryski, Main and Dixon 1986; Walker and Barrow 1985). Notably, in those

focusing of federal district courts, very little evidence of differences in female decision making has been found. All in all, despite the numerous studies examining whether female judges, generally and on district courts specifically, decide cases differently than male judges, much is left to be explained about the choices and decisions that female judges make in comparison to their male colleagues.

C Female Judges in the Case Disposition Context

Only a very small portion of judicial decision making — the judge’s published decision that reveals the outcome of a case — has actually been examined for differences between male and female judges. Although certainly a good first step and one that can be studied with relative ease, solely studying votes on the merits or other reported decisions provides a very incomplete picture of the work done and decisions made by federal judges. And, indeed, given the non-random selection bias present in cases that yield published opinions and/or are appealed, it is no surprise that differences in the decisions of judges, based on their sex, have rarely been found by scholars. In particular, focusing on the reported and published decisions of judges leaves unexplored all of the case management and agenda setting behavior and decisions present throughout this process for these actors. Such non-recorded votes and decisions of women have been studied outside of the judiciary and have yielded a great deal of insight. Scholars of legislative behavior have found that women in leadership positions in legislatures, for example, have more collaborative styles than similarly situated male leaders, evidence of gender differences that are not visible at the legislative voting stage (Rosenthal 1998; Kathlene 1995).

Given the theories on female decision making, it is quite plausible that female district court judges, based upon their social and background experiences and their communication and problem solving skills, will be more apt to dispose of the cases before them by settlement than will male judges. Settlement has been theorized to “produce greater disputant satis-

faction with the decision or with the courts generally” and to “permit compromise positions that are unattainable through adjudication” (Galanter 1985), principles that, if the above decision making theories are correct, a female judge would favor greatly. Similarly, if female judges do indeed speak in a “different voice,” one would expect that to be reflected in their (negative) preferences regarding the adversarial nature of the trial process. The most tangible representation of this is by comparing the use of the heavily adversarial and rule-based nature of trials and non-trial adjudications to the non-adversarial and compromise-driven nature of settlements by male and female judges. Because of these existing theories, **I predict that female judges will be more likely to dispose of their cases by settlement than male judges.**

V THE DATA

This project studies cases involving personal injury torts and civil rights disputes terminated in district courts from 1996 to 2004. The personal injury torts cases in my data set include those involving airplanes, marine-related activity, and motor vehicles, as well as those classified as “other.” For civil rights disputes, the data cover those related to jobs, accommodations, and welfare, as well as those cases coded as “other” types of civil rights disputes. For studying these issues, I focus on four federal district courts located in four different circuits: District of Massachusetts, Eastern District of Missouri, Western District of Washington, and the Northern District of Texas. The selection of these districts was for reasons assumed to be unrelated to the merits of the inquiry. Indeed, these districts were attractive for their geographic and circuit diversity as well as the presence of at least one female judge serving on them at some point during the years studied here.²

²The choice of districts by whether they have a female judge serving on them produces an inevitable problem with generalization. The result is that the scope of this study does not allow us to draw any conclusions about districts that do not have nor have never had female judges serving on them. There is no obvious reason to believe, however, that the results of this study are not generalizable to other districts that do have female judges.

To find the cases utilized in my study and the general information about their dispositions, I utilize the Administrative Office of the United States Court’s (“AO”) terminations database. This database contains numerous descriptive variables about civil cases terminated each year, starting in 1970. While the AO’s database does include case-specific information, it does not include the presiding judge in a case. I thus merged the presiding judge information, accessed through PACER (“Public Access to Court Electronic Records”), into the relevant portion of the AO data for this study. To code judge specific characteristics, I relied on the Federal Judicial Center’s (“FJC”) Biographical Directory of Federal Judges (available at <http://www.fjc.gov/>).

A Random Assignment

Random assignment of cases to judges is a critical assumption of most studies of judicial behavior. For collegial courts, this assumption is easy to believe, and if necessary, test, given the regularity of the process by which cases come to the courts and are assigned to a panel of judges. For district courts, however, there is a great amount of variety in the types of cases that come before the court, how those cases are assigned to particular judges, and other related practices. Given this, testing whether cases are indeed randomly assigned in individual districts is critical for empirical study of these courts.

Following the lead of Ashenfelter, Eisenberg and Schwab (1995), I test to see that the assignment of cases in the four districts in my data set was random. Only if cases are randomly assigned can we confidently make assumptions about judges hearing the same types of cases with, for example, similar initial likelihood of settlement or going to trial. In essence, then, random assignment creates an environment ideal for statistical testing. With random assignment, pre-filing factors that may be different between cases can be assumed to be randomly assigned among the different judges in the district.

I test for random assignment for three different case characteristics in my dataset —

namely, personal injury cases, civil rights cases, and cases that are disposed in less than 90 days of being filed — for each of the four districts. As I will discuss below, each of these three categorizations is theoretically meaningful for these data and this project. My test for random assignment focuses on cases filed in 1999.

To test for random assignment, I utilize the chi-squared test statistic and compare the number of cases heard by individual judges in each category (personal injury, civil rights, <90 days to termination) to the expected number of cases that those judges would hear if assignment was indeed random. The results, reported in Table 4 in the Appendix, indicate that for none of the categories in any of the districts can we reject the null hypothesis that assignment of cases to judges is independent of the case being a personal injury case, a civil rights case, or being terminated in less than 90 days of being filed. Thus, short of being in the clerk’s office when case assignment is taking place in these districts, this test provides some evidence, at least for the case types and characteristics of interest for this study, that random assignment has taken place in the four districts of interest in this study.

B Dependent Variable

The dependent variable of this study is the **disposition method** of the case. Broadly speaking, disposition method can be broken into two categories (settlement or non-settlement) or three categories (trial, non-trial adjudication, and settlement). Following the lead of Hadfield (2004), I recoded the AO’s disposition variable into these three categories.³

³The following dispositions, as coded by AO, were dropped from the analysis because they were procedural and/or irrelevant to this project: transferred to another district, remanded to state court, dismissed for want of prosecution, judgment on default, multi-district litigation transfer, remanded to U.S. agency, statistical closing, and stayed pending bankruptcy. Cases coded in the AO data as “dismissed: voluntarily” were coded as settled based on Hadfield’s auditing finding that the plurality of dispositions under this are settled. Cases coded as “dismissed: other” were dropped from the analysis based on Hadfield’s inconsistent findings in the coding of this category of dispositions. In future work, I plan to recode disposition type from the dockets, thus eliminating the need to rely on this problematic AO variable.

C Independent Variable of Interest

As has been noted previously, this paper seeks to examine whether or not female judges dispose of their cases in a systematically different way than male judges. Because of this, the covariate of interest in this study is the **sex** of the judge. This dichotomous variable is coded 0 for males and 1 for females.

Figure 2 displays details on the sex of the judges in my data set. As we can see, the average number of female judges in the data set is slightly above the national district court average of 17.3 percent. Additionally, the number of cases heard by females in the data set also falls right around 17 percent of the total cases.

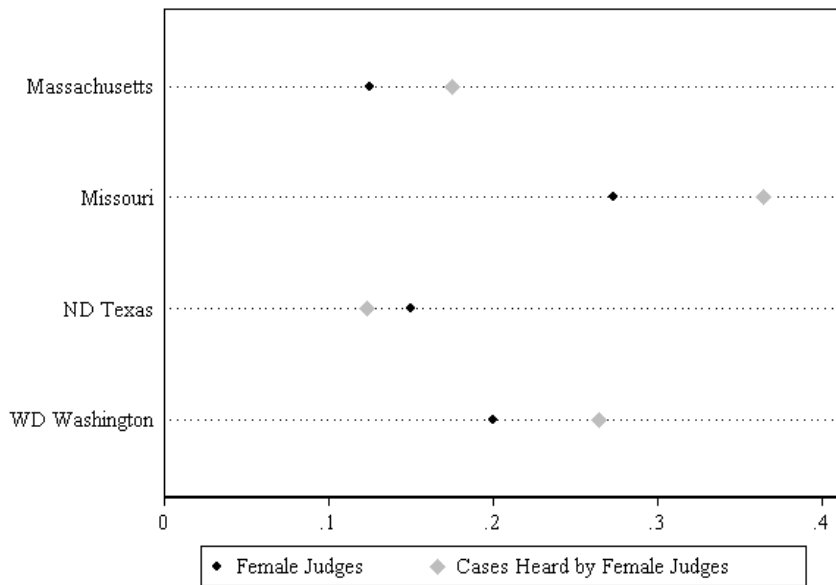


Figure 2: Female judges and the proportion of personal injury and civil rights cases they hear. The dark points represent the proportion of judges in the district that are female while the light points represent the proportion of cases in the district that are terminated by female judges. Data cover cases terminated from 1996 to 2004.

D Control Variables

To help control for the impact that other judge background and case specific factors might have on the disposition method utilized by a judge, I have included a number of additional covariates in my estimation. The judge specific variables included here (sex, race, ideology, age, time on bench, and previous judicial experience) are commonly used in the study of judicial behavior (e.g. Brudney, Schiavoni and Merrit 1999; Ulmer 1973; Kulik, Perry and Pepper 2003).

Race: Similar to the sex of the judge, many scholars have tested and some have found that minority judges decide cases systematically differently from white judges (Crowe 1999; Sisk, Heise and Morriss 1998). The race of the judges in my data set varies among three races, Caucasian, African-American, and Hispanic but is coded merely to reflect minority versus non-minority judges.

Judge Ideology: The judge-specific factor that is most commonly studied by empirical legal scholars is the ideological preferences of the judge. When studying federal judges, many scholars rely on the party of the appointing president as a proxy for a judge's political ideology. However, as this does not account for the practice of senatorial courtesy that is common when judges are nominated to lower courts, scholars have recently begun to rely on Judicial Common Space scores that do take this practice into account (Giles, Hettlinger and Peppers 2001; Epstein et al. N.d.). Briefly, to compute these scores, the federal judge is assigned the Poole and Rosenthal NOMINATE Common Space score (available at <http://voteview.com/readmeb.htm>) of the senator from his home state (or average of the two senators) if that senator(s) is from the same party as the appointing president. If neither senator is from the same party as the president, the judge is assigned the Common Space score of the appointing president. The resulting computed ideology scores range from -1 (the most liberal) to 1 (the most conservative). Within my data, the ideology of judges ranges from -0.547 to 0.577.

Time on Bench: The more time that a judge spends on the bench, the more he may prefer to utilize trials over settlement. Judges with a lot of judicial seniority may be more accustomed to trials being a more common feature of district court decision making and judging. Time on bench is measured in years and ranges from under one year to over 36 years, with a mean of approximately 11 years. The distribution of seniority is positively skewed, just as would be expected from any variable measuring amount of service in the judiciary.

Prior Experience: The prior work of a judge could very well have an impact on his likelihood to prefer one method of case disposition over others. In this analysis, I code as dummy variables a judge's prior experience as a prosecutor, state judge, and magistrate. As a former **prosecutor** or former **state judge**, a district court judge may be more likely to prefer trials to other disposition methods because of the propensity for using that disposition method in those previous careers. As a former **magistrate**, a judge might very well prefer settlement.

Fixed Effects: In general, there are a number of potential intricacies about the districts, types of cases, and the year of the termination that are not accounted for by the other control variables in this analysis. Therefore, a helpful, albeit imperfect, solution is to provide fixed effects dummy variables to measure these possibilities. Thus, fixed effects variables for year, nature of suit, and district will control for differences among case types in each termination year and in each district.

VI METHODS, ANALYSIS, AND FINDINGS

A Logistic Regression Model

To gain a basic understanding of the settlement practices of male and female judges in district courts, I estimate a logistic regression model comparing cases that are settled to

those that are disposed of by either trials or non-trial adjudications. Within my estimated models, both for the logistic regression and for the multinomial logistic regressions that I report *infra*, I compute robust standard errors by clustering based on the individual judge. By clustering in this way, I am recognizing that the observations with the same presiding judge are not independent, and thus, that the standard errors resulting from a model that does not account for this will be inaccurate. By clustering, my models yield robust standard errors (a.k.a. Huber-White standard errors), and thus are appropriate given the violation of independence (Long and Freese 2006).

I also estimate two sets of models in each of the logistic and multinomial logistic regression contexts. One model includes all of the relevant terminated cases while the other excludes those cases that were terminated within 90 days of being filed. Previous work has theorized that cases terminated in the early days after filing do so because of the efforts of the parties (Kakalik 1997). With such a short period of time between a case filing and termination, there is little opportunity for a judge to get involved in a case and, thus, cases that do terminate early are likely only doing so because the parties initiate and carry out the disposal of their case. In the context of this study, any findings regarding the settlement behavior of female judges will simply not be robust unless they hold for cases terminating outside of 90 days of being filed.

These logit models provide some interesting information about terminations, as can be seen in Table 1. Notably, this model, with the inclusion of a **sex** variable, performs well. For model (1), the Bayesian Information Criterion (BIC) for the model is 25283.41 while the BIC for the logit model estimated without a **sex** variable is 25309.42. For Model (2), the BIC's are 22224.48 and 22255.75 for the full and restricted models, respectively. These differences of 26 and over 30 for Models (1) and (2) provide "very strong" evidence that the full models here are preferable to the restricted models that do not account for a judge's sex (Long and Freese 2006).

	(1)	(2)
Variable	All Terminations	All Terminations > 90 days
Sex of Judge	-0.27* (0.10)	-0.31* (0.09)
Race of Judge	-0.16 (0.11)	-0.15 (0.12)
Judge Ideology	0.01 (0.13)	0.04 (0.13)
Time on Bench	0.02* (0.01)	0.02* (0.01)
Former Prosecutor	-0.10 (0.09)	-0.09 (0.09)
Former State Judge	-0.05 (0.11)	-0.08 (0.10)
Former Magistrate	0.38* (0.12)	0.39* (0.13)
Intercept	-0.98* (0.44)	-1.90* (0.31)
N	22,928	19,859
Log-likelihood	-12511.18	-10983.58

Table 1: Logistic Regression Models of Cases Disposed of by Settlement Verses those Disposed of by Non-Settlement. Model (1) represents all cases terminated from 1996 to 2004 while Model (2) represents only those cases terminated more than 90 days after being filed. Statistical significance at the .05 level is denoted by *. Standard errors (indicated in parentheses) are robust and observations are clustered by judge. Fixed effects for year, court, and nature of suit are included and are reported in the Appendix when they are statistically significant at the .05 level.

As Table 1 indicates, the **sex** variable is signed in the negative direction and is statistically significant at the .05 level in both Model (1) and Model (2). This finding of statistical significance does not tell us the amount of the effect of judge sex, so we turn to a test of substantive significance for further illustration. Figure 3 provides the predicted probability of a male and female judge disposing of a case by settlement in the districts in data set.

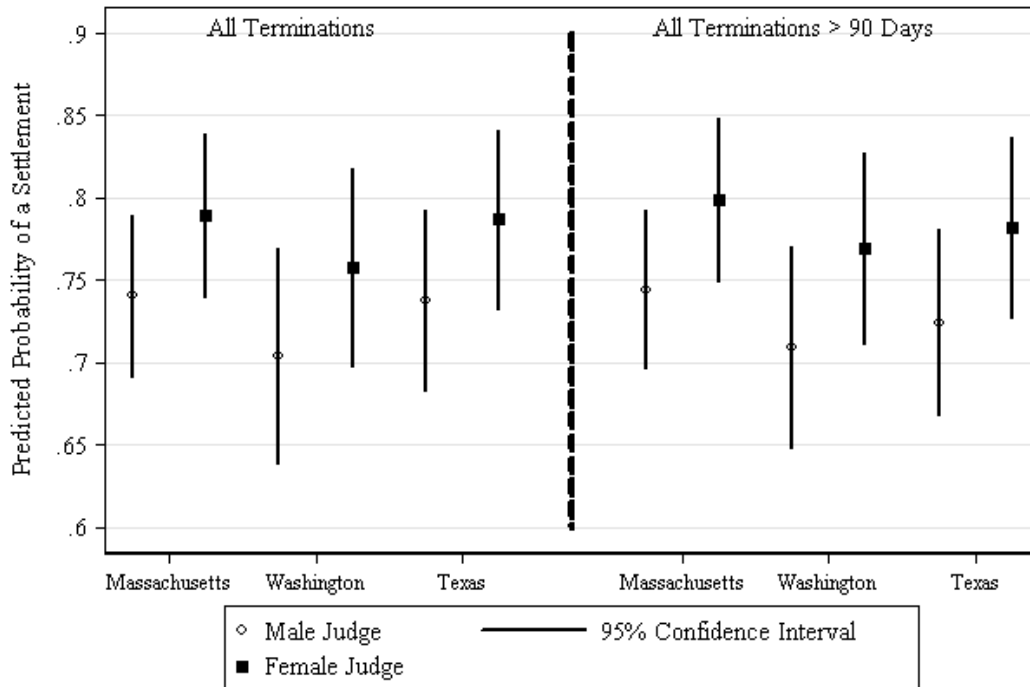


Figure 3: Predicted probability of a judge disposing of a case by settlement, by the sex and district court of the judge. Predicted probabilities were computed by altering the sex of the judge from male to female and assuming the following profile judge (based on variable means and modes): a white judge, with no previous relevant experience, 11 years of seniority on the bench, and a moderate ideology (Judicial Common Space score of 0.029) hearing a civil rights employment case terminated in 1997. The Eastern District of Missouri served as the baseline and is thus excluded from the analysis. See Appendix for the differences in means and confidence intervals. The figure was created using Stata and Long’s SPost.

Notably, Figure 3 indicates that female judges, regardless of the district court that they sit on, are more likely to dispose of cases by settlement than male judges. Of course the corollary to this is that male judges dispose of their cases by the adversarial methods of trials and non-trial adjudications more than females. For all terminations in the data set, female judges have about 0.05 more of a predicted probability of settling than do male judges. This probability increases to approximately 0.06 when looking only at cases that terminate more than 90 days from being filed. These results are statistically significant across all districts. Thus, although settlement is common for all of the cases, regardless of the judge’s sex, when

all else is equal, female judges are approximately 6 percent more likely to settle their cases than male judges.

B Multinomial Logistic Regression Models

Although the above logistic regression is interesting, it is a relatively rudimentary model for these purposes. It does not, for example, account for the intricacies of the pre-termination process for district court cases such as the different means of by which a case may reach disposition. As noted *supra*, there are many potential differences between cases that terminate by trial versus those that do so by a non-trial adjudication. Although a judge's settlement practice may be the behavior of ultimate interest here, failure to account for the potentially opposing differences between the other disposition methods in the choice of a statistical model may have detrimental effects on the reliability of results. Given this, multinomial logistic regression allows the modeling of my more intricately defined dependent variable of three unordered categories of case disposition: settlement, non-trial adjudication, or trial.

With my data, I estimate two sets of multinomial logistic regression models — one for personal injury cases and one for civil rights cases — to help provide a better understanding of the effect of judge sex in the case management stage of district courts. By dividing the data by case area, I am acknowledging some potential differences between civil rights disputes and personal injury torts. Included in this is the common understanding that a non-trivial number of civil rights litigants pursue litigation with no desire to settle their case; rather, their goal is to have their day in court and achieve the development of favorable law. Alternatively, litigation involving personal injury torts, when all other things are equal, is much more likely to involve parties with a favorable attitude toward settlement (Galanter 2004; Siegelman and Waldfogel 1999). The result is that these opposing litigation forces may not be fully accounted for in an aggregated model and unnecessary pressure would be

assigned to the fixed effects variables for case area.⁴

Table 2 provides the multinomial regression results for personal injury cases. This model performs well when compared to a restricted model lacking a `sex` variable. For Model (1), the BIC for the full model is 6748.641 while the BIC for the restricted model is 6756.729. For Model (2), the BIC's are 6015.324 and 6020.315 for the full and restricted models, respectively. These differences of approximately 8 and 5 provide “strong” and “positive” evidence, respectively, for the full model’s appropriateness over the restricted model that does not control for the sex of a judge (Long and Freese 2006). In a test of the assumption that the three alternatives for disposition method (settlement, trial, and non-trial adjudication) are independent of one another, the null hypothesis that they are independent cannot be rejected.⁵

⁴If one multinomial logistic regression model is estimated (and thus personal injury cases and civil rights cases are aggregated like they were in the logit model section), the results remain interesting, although slightly less nuanced. Notably, the sex dummy behaves as it does for the tort cases — it is statistically and substantively significant when comparing non-trial adjudications and settlement, but does not reach significance when examining dispositions by trial.

⁵This assumption is referred to as Independence of Irrelevant Alternatives (“IIA”), and satisfying it is necessary for modeling with multinomial logistic regression. In a Hausman test of the IIA assumption in Model (1) (based on Hausman and McFadden (1984)), the assumption of IIA cannot be rejected (Trials (vs. Settlements): $\chi^2=-1.184$, $df=22$, $p=1.000$), (Non-trial Adjudications (vs. Settlements): $\chi^2=2.052$, $df=22$, $p=1.000$). In a similar test of the IIA assumption in Model (2), the assumption of IIA cannot be rejected (Trials (vs. Settlements): $\chi^2=-9.840$, $df=22$, $p=1.000$), (Non-trial Adjudications (vs. Settlements): $\chi^2=0.137$, $df=22$, $p=1.000$).

Variable	(1)		(2)	
	All Terminations		All Terminations > 90 days	
	Trial vs. Settlement	Non-trial vs. Settlement	Trial vs. Settlement	Non-trial vs. Settlement
Sex of Judge	-0.72* (0.19)	-0.27* (0.12)	-0.67* (0.18)	-0.29* (0.15)
Race of Judge	0.07 (0.16)	0.15 (0.18)	0.09 (0.15)	0.17 (0.21)
Judge Ideology	-0.09 (0.24)	0.12 (0.14)	-0.07 (0.24)	-0.07 (0.16)
Time on Bench	0.05* (0.01)	0.00 (0.01)	0.05* (0.01)	.000 (0.01)
Former Prosecutor	-0.44* (0.20)	-0.04 (0.13)	-0.47* (0.19)	-0.18 (0.16)
Former State Judge	-0.44 (0.24)	0.06 (0.13)	0.17 (0.23)	0.03 (0.14)
Former Magistrate	0.49* (0.23)	0.41* (0.19)	0.52* (0.21)	0.40 (0.23)
Intercept	-2.48* (0.29)	-2.59* (0.29)	-4.20* (0.54)	-2.20 (0.35)
N	5,545		4,965	
Log-likelihood	-3184.67		-2820.44	

Table 2: Multinomial Logistic Regression of Case Disposition Methods for Personal Injury Cases. Cases terminated by settlement are the baseline category. Model (1) represents all cases terminated from 1996 to 2004 while Model (2) represents only those cases terminated more than 90 days after being filed. Statistical significance at the .05 level is denoted by *. Standard errors (indicated in parentheses) are robust and observations are clustered by judge. Fixed effects for year, court, and nature of suit are included and are reported in the Appendix when they are statistically significant at the .05 level.

As indicated in Table 2, the sex of a judge is statistically significant for both comparisons of settlement to trials and settlement to non-trial adjudications for both Model (1) and Model (2). Figure 4 displays the predicted probability of settlement of personal injury cases for male and female judges in Massachusetts, the Western District of Washington, and the Northern District of Texas. As we can see, women are once again disposing of cases by settlement more than male judges. When looking at all terminated personal injury cases or only those that terminate more than 90 days from filing, female judges have a likelihood of settling that is approximately 7.5% higher than male judges. Unreported in the figure are

the predicted probability results for non-trial adjudications and trials. For these disposition methods, male judges are predicted to dispose of cases by both more than females, although the difference between the sexes with regard to non-trial adjudications is not statistically significant.

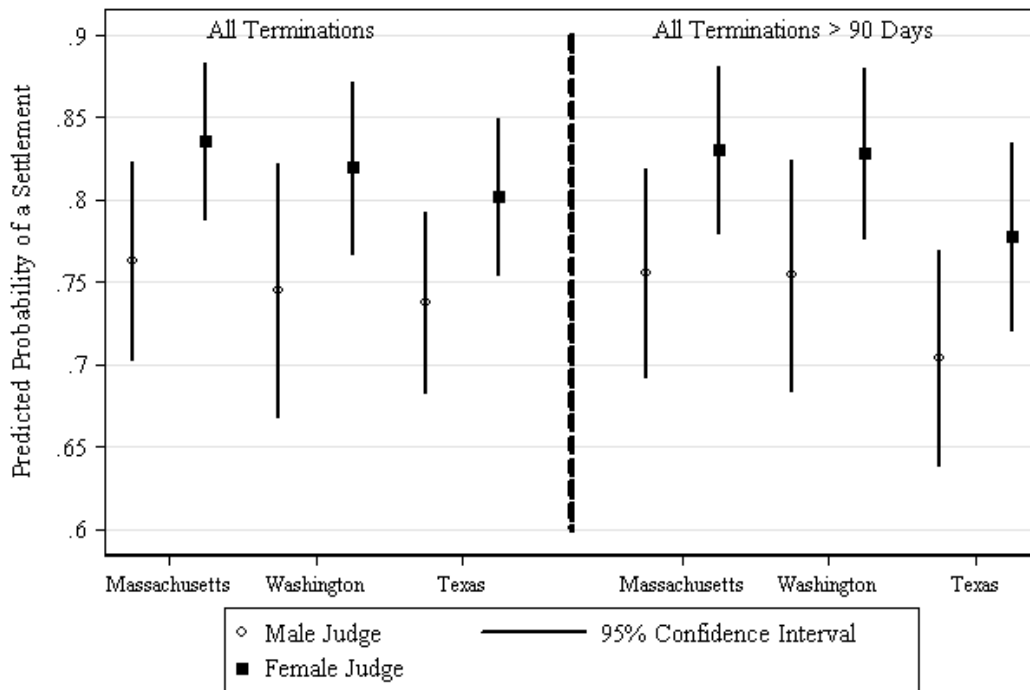


Figure 4: Predicted probability of a judge disposing of a personal injury case by settlement, by the sex and district court of the judge. Predicted probabilities were computed by altering the sex of the judge from male to female and assuming the following profile judge (based on variable means and modes): a white judge, with no previous relevant experience, 12 years of seniority on the bench, and a moderate ideology (Judicial Common Space score of -0.025) hearing a personal injury (“other”) case terminated in 1997. The Eastern District of Missouri served as the baseline and is thus excluded from the analysis. See Appendix for the differences in means and confidence intervals. The figure was created using Stata and Long’s SPost.

Table 3 provides the results from the multinomial logistic regression for dispositions in civil rights cases. For Model (1), the BIC for the full model is 21941.7, while the BIC for the restricted model is 21948.48, providing “strong” evidence for the full civil rights model. For Model (2), the BIC’s are 19904.38 and 19914.2, for the full and restricted models,

respectively. These differences of 7 and 10 provide “strong” evidence that accounting for the sex of the judge improves the performance of the models (Long and Freese 2006). As with the personal injury tort models, we cannot reject the null hypothesis in the civil rights context (for either model) that the three different methods of case disposition are independent from one another.⁶ Table 3 indicates, for both Model (1) and Model (2), that the sex of a judge is only statistically significant for explaining differences between settlements and non-trial adjudications.

⁶In a Hausman test of the IIA assumption in Model (1), the assumption of IIA cannot be rejected (Trials (vs. Settlements): $\chi^2=-0.844$, $df=22$, $p=1.000$), (Non-trial Adjudications (vs. Settlements): $\chi^2=0.123$, $df=22$, $p=1.000$). For Model (2), the assumption of IIA can also not be rejected, with Trials (vs. Settlements): $\chi^2=-0.085$, $df=22$, $p=1.000$), (Non-trial Adjudications (vs. Settlements): $\chi^2=-0.035$, $df=22$, $p=1.000$).

Variable	(1)		(2)	
	All Terminations		All Terminations > 90 days	
	Trial vs. Settlement	Non-trial vs. Settlement	Trial vs. Settlement	Non-trial vs. Settlement
Sex of Judge	-0.22 (0.21)	-0.29* (0.13)	-0.24 (0.18)	-0.32* (0.13)
Race of Judge	-0.03 (0.15)	-0.09 (0.17)	0.00 (0.16)	-0.07 (0.18)
Judge Ideology	0.24 (0.17)	-0.02 (0.17)	0.26 (0.16)	0.02 (0.14)
Time on Bench	0.04* (0.01)	0.02* (0.01)	0.03* (0.01)	0.01 (0.01)
Former Prosecutor	-0.32* (0.16)	0.07 (0.11)	-0.28 (0.16)	0.06 (0.11)
Former State Judge	-0.20 (0.22)	-0.07 (0.11)	-0.20 (0.22)	-0.11 (0.10)
Former Magistrate	0.17* (0.16)	0.46* (0.17)	0.15 (0.16)	0.46* (0.16)
Intercept	-2.74* (0.35)	-1.78* (0.24)	-0.72* (0.85)	-0.55* (0.71)
N	12,931		11,680	
Log-likelihood	-10762.57		-9746.15	

Table 3: Multinomial Logit Regression of Case Disposition Methods for Civil Rights Cases. Cases terminated by settlement are the baseline category. Model (1) represents all cases terminated from 1996 to 2004 while Model (2) represents only those cases terminated more than 90 days after being filed. Statistical significance at the .05 level is denoted by *. Standard errors (indicated in parentheses) are robust and observations are clustered by judge. Fixed effects for year, court, and nature of suit are included and are reported in the Appendix when they are statistically significant at the .05 level.

Once again, looking at the predicted probabilities provides insight on the substantive implications of this model and its coefficients. As we can see in Figure 5, differences between male and female judges do maintain substantive significance for settlements, with the probability of females disposing of cases by settlements much higher than it is for males. And, just as with the logistic regression models above, female judges widen the gap between themselves and their male colleagues regarding their probability of settling when we focus only on cases that terminate outside of the initial 90 day filing window. Figure 5 (when compared to 4) also clarifies that settlements are much less likely in the civil rights context

than in the personal injury context, regardless of the sex of the judge. As noted above, this makes sense given what we know about many civil rights plaintiffs and their desire to not settle their cases. Unlike in the personal injury context, the difference between male and female judges with regards to their predicted probability of disposing of civil rights cases by trial is not statistically significant (results unreported in figure). Additionally, the statistical significance of the predicted probabilities for non-trial adjudication dispositions is inconsistent depending on the district that one examines.

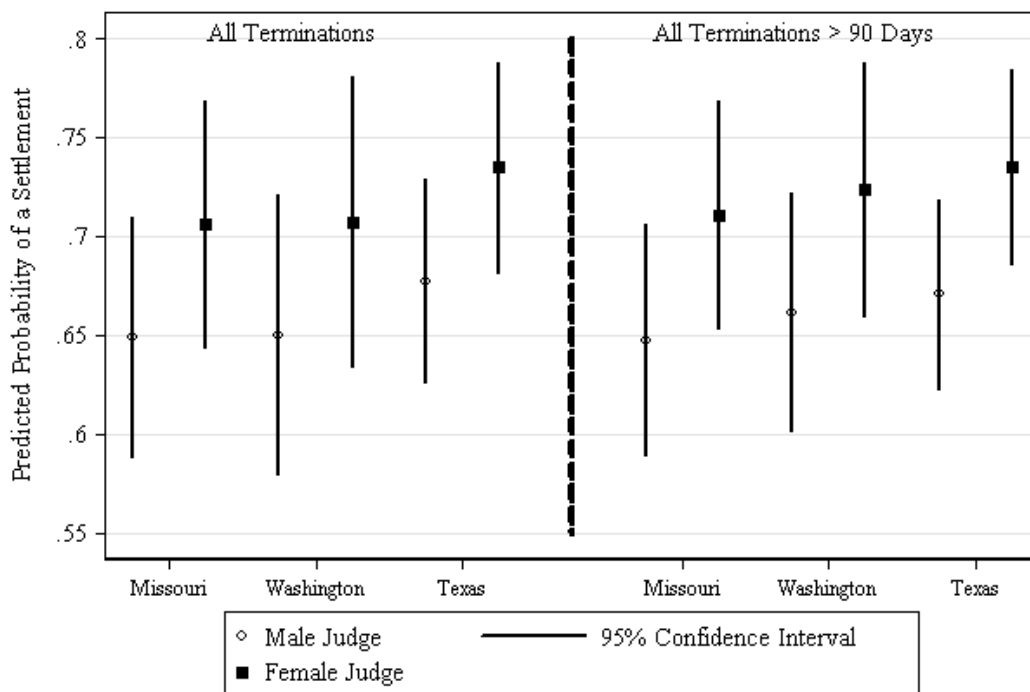


Figure 5: Predicted probability of judge disposing of a civil rights case by settlement, by the sex and district court of the judge. Predicted probabilities were computed by altering the sex of the judge from male to female and assuming the following profile judge (based on variable means and modes): a white judge, with no previous relevant experience, 11 years of seniority on the bench, and a moderate ideology (Judicial Common Space score of 0.045) hearing a civil rights employment case terminated in 1997. Massachusetts served as the baseline district and is thus excluded from the results. See Appendix for the differences in means and confidence intervals. The figure was created using Stata and Long's SPost.

VII DISCUSSION

The above discussion reiterates some things that we may have already known about the case management stage of judicial decision making. As we can see from all of the models' estimates, judges, no matter their sex, are far more likely to dispose of cases by settlement than by any other means. Given the "vanishing trial" literature that exists, this is neither a new nor a surprising finding.

With that said, however, the results also illustrate something previously undiscovered in empirical scholarship: whether the focus be personal injury cases or civil rights cases, female judges are more likely than males to utilize settlement as a disposition method. Previous judicial scholarship looking for the "female" voice has rarely found it. And, when it did, it was usually only in cases involving feminine issues. By switching focus to the pre-outcome stage of judicial decision making, and specifically, how cases are disposed of, I am able to avoid the pitfalls present in other work due to case selection bias. In comparison to actions taken by her male colleagues in the cases that are assigned to them, for the female district court judge we can say that, consistently, across districts and case areas and controlling for a slew of other factors, "she'll settle it." Indeed, the likelihood of a female judge settling a case is anywhere from 5 percent to nearly 8 percent higher than it is for males.

The findings regarding non-trial adjudication and trial are not nearly so clear. Mixed results were found in the models for these types of dispositions — with statistical significance present for only some issue areas and in only some districts. Although men are certainly not settling with as much likelihood as women, they appear to be utilizing non-trial adjudications and trials as dispositions in such a way that we cannot regularly distinguish their usage from that of women. The high degree of discretion available for judges in how much they encourage or push settlement compared to the lesser amounts for non-trial adjudication and trial stage terminations may help to explain why the results for the latter two disposition types are so

mixed.

Also not performing particularly strongly are many of the covariates in the estimated models. In general, the covariates other than **sex** do not provide a great deal of explanation of the dependent variable. For example, two of the variables capturing the past judicial-related experience of a judge, **state judge** and **prosecutor**, are rarely statistically significant. Former experience as a **magistrate** is at times significant but is signed in the direction opposite of what was expected. A variable like ideology, a regularly strong performer when it comes to explaining judicial *votes* in the outcome of cases, never approaches statistical significance in my models of the disposition method of cases.

Judicial seniority based on the number of years that a judge has served on the district court is a covariate that does have a statistically significant effect in most of above models. The results on this variable indicate that the longer judges serve on the bench, the less likely they are to dispose of cases by settlement. Is this settlement effect of age stable across female and male judges? To test this, I compute the predicted probability of male and female judges settling a case across the number of years that they have been serving on the district court. The test is computed based on the results from the multinomial logistic regression Model (2) (terminations > 90 days) of personal injury cases. Figure 6 reports the results of these predicted probabilities across seniority and judge sex.

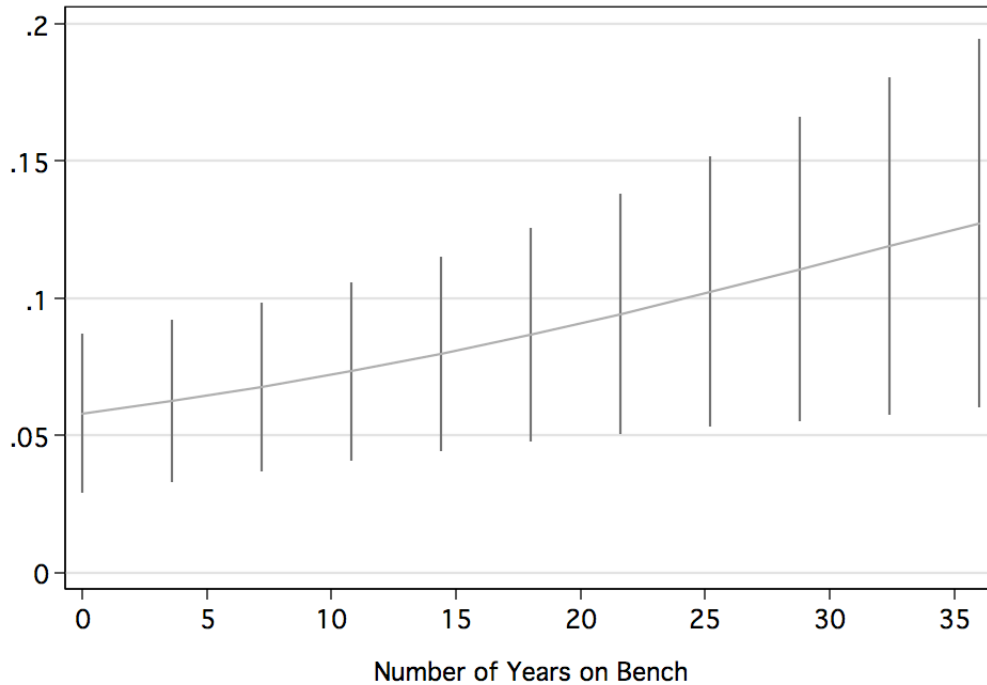


Figure 6: Differences in the predicted probability of the termination of cases by settlement between female and male judges, accounting for the seniority of the judges. Predicted probabilities were computed by altering the sex of the judge from male to female and varying seniority on the bench from less than one year to thirty six years and assuming the following profile judge characteristics (based on variable means and modes): a white judge, serving in Massachusetts, with no previous relevant experience, and a moderate ideology (Judicial Common Space score of -0.03) hearing a personal injury (“other”) case terminated in 1997. The vertical lines represent the 95% confidence interval on the difference while the continuous line indicates the mean difference as seniority increases. The figure was created using Stata and Long’s SPost.

As we can see from Figure 6, female judges always have a higher predicted probability of settling a case than male judges, no matter the amount of time that they have spent on the bench. Even more interesting, though, is that the degree of this difference actually *increases* the longer the judges serve on the district court. Indeed, in comparing the predicted likelihood of disposing of a case by settlement for two similar judges, one a male and the other a female, with those judges each having over 20 years of experience on the federal court, female judges are predicted to settle with a likelihood ranging from 9 percent to 11 percent

higher than male judges. These results provide additional strength to the findings regarding the consistently higher probability by which female judges settle cases in comparison to their male colleagues.

VIII CONCLUSION

The findings of this paper, including the fact that female judges consistently settle cases more than males, provides us some insight into the world of litigation. Indeed, the results regarding the settlement practices of female judges remain just as powerful, perhaps even more so, when the cases most likely to be resolved by the parties alone — those terminating within 90 days of filing — are removed from the statistical analysis. This finding helps to confirm existing theories on female behavior — that since females have different communication preferences and social backgrounds from male judges, their behavior may be different — and it does so in a setting that is heretofore untested.

IX APPENDIX

A *Random Assignment*

District	Personal Injury Cases	Civil Rights Cases	< 90 days to Termination
Massachusetts	7.68 (1.00)	5.17 (1.00)	13.34 (0.98)
ED Missouri	2.64 (1.00)	1.03 (1.00)	2.90 (1.00)
ND Texas	7.14 (0.99)	5.84 (1.00)	13.34 (0.77)
WD Washington	11.58 (0.17)	7.30 (0.51)	1.11 (1.00)

Table 4: Chi-Squared Statistic for Random Assignment of Cases to Judges in the Four Districts in the Database. Results are for personal injury cases, civil rights cases, and cases terminating in less than 90 days from when they are filed. The number reported in each cell (the chi-squared statistic) represents how close the number of cases heard by individual judges in that district come to the number they would be expected to hear if assignment was random. The number in parentheses is the p -value (one-tailed). Low p -values (such as 0.10 or 0.05) would provide evidence for rejecting the null hypothesis of random assignment. All p -values are well above standardly recognized levels of statistical significance.

B *Statistically Significant Fixed Effects*

1 Logit Models

	(1)	(2)
Variable	All Terminations	All Terminations > 90 days
Airline Torts	–	-1.34 (0.63)
Marine Torts	-1.21 (0.41)	-1.85 (0.56)
Motor Vehicle Torts	-1.20 (0.44)	-1.85 (0.58)
Accommodations Cases	–	-1.13 (0.56)
N	22,928	19,859
Log-likelihood	-12511.18	-10983.58

Table 5: Statistically Significant Fixed Effects for the Logistic Regression Models. The baseline fixed effects categories are Missouri, welfare civil rights cases, and cases terminated in 2004. See the main text for the context regarding these models.

2 Multinomial Logistic Regression Models — Personal Injury Torts

Variable	(1)		(2)	
	All Terminations		All Terminations > 90 days	
	Trial vs. Settlement	Non-trial vs. Settlement	Trial vs. Settlement	Non-trial vs. Settlement
Airplane Torts	–	0.85 (0.33)	–	1.07 (0.32)
Other Personal Injury Torts	0.57 (0.12)	1.12 (0.15)	0.53 (0.13)	1.26 (0.16)
1996 Terminations	0.66 (0.01)	-0.25 (0.28)	0.62 (0.28)	–
1997 Terminations	0.65 (0.29)	-0.34 (0.30)	0.68 (0.31)	–
1999 Terminations	1.11 (0.54)	–	1.16 (0.57)	–
Massachusetts	-1.21 (0.22)	–	-1.18 (0.21)	–
Texas	-1.62 (0.34)	0.45 (0.18)	-1.51 (0.32)	0.50 (0.21)
Washington	-1.19 (0.28)	0.14 (0.21)	-1.23 (0.28)	–
N	5,545		4,965	
Log-likelihood	-3184.67		-2820.44	

Table 6: Statistically Significant Fixed Effects for the Multinomial Logistic Regression Models of Personal Injury Tort Cases. Baseline categories for fixed effects are Missouri, cases terminated in 2003, and motor vehicle torts. See the main text for the context regarding these models.

3 Multinomial Logistic Regression Models — Civil Rights

Variable	(1)		(2)	
	All Terminations		All Terminations > 90 days	
	Trial vs. Settlement	Non-trial vs. Settlement	Trial vs. Settlement	Non-trial vs. Settlement
Other Civil Rights Cases	0.54 (0.19)	0.79 (0.16)	0.63 (0.19)	0.85 (0.18)
Welfare Civil Rights Cases	1.64 (0.68)	1.07 (0.52)	2.04 (0.76)	—
1996 Terminations	0.82 (0.31)	—	0.89 (0.29)	—
1997 Terminations	0.65 (0.31)	—	0.66 (0.27)	—
1998 Terminations	0.72 (0.33)	0.28 (0.10)	0.80 (0.30)	0.27 (0.11)
1999 Terminations	0.78 (0.38)	0.29 (0.10)	0.75 (0.37)	0.24 (0.11)
2000 Terminations	0.42 (0.18)	—	0.54 (0.18)	—
2001 Terminations	—	—	0.35 (0.17)	—
2002 Terminations	0.34 (0.16)	—	0.42 (0.16)	—
2004 Terminations	—	0.28 (0.15)	—	0.23 (0.11)
Texas	-0.71 (0.22)	0.36 (0.15)	-0.71 (0.21)	0.44 (0.15)
N	12,931		11,680	
Log-likelihood	-10762.57		-9746.15	

Table 7: Statistically Significant Fixed Effects for the Multinomial Logistic Regression Models of Civil Rights Cases. Baseline categories for fixed effects are Massachusetts, cases terminated in 2003, and accommodations cases. See the main text for the context regarding these models.

C Predicted Probabilities

Model	District	Difference of Means	Confidence Interval for Difference
Logit	Massachusetts	0.0489	[0.0162, 0.0815]
	Washington	0.0534	[0.0165, 0.0904]
	Texas	0.0493	[0.0162, 0.0823]
Logit > 90 days	Massachusetts	0.0545	[0.0244, 0.0847]
	Washington	0.0596	[0.0254, 0.0938]
	Texas	0.0575	[0.0250, 0.0900]
MNL-Pers. Inj.	Massachusetts	0.0726	[0.0405, 0.1046]
	Washington	0.0744	[0.0332, 0.1155]
	Texas	0.0647	[0.0314, 0.0979]
MNL-Pers. Inj. > 90 days	Massachusetts	0.0751	[0.0419, 0.1083]
	Washington	0.0741	[0.0375, 0.1106]
	Texas	0.0732	[0.0309, 0.1155]
MNL-Civ. Rights	Missouri	0.0574	[0.0183, 0.0966]
	Washington	0.0570	[0.0183, 0.0957]
	Texas	0.0569	[0.0174, 0.0965]
MNL-Civ. Rights > 90 days	Missouri	0.0642	[0.0266, 0.1018]
	Washington	0.0620	[0.0305, 0.0935]
	Texas	0.0632	[0.0297, 0.0968]

Table 8: Difference of Means (and Corresponding Confidence Intervals) for the Predicted Probabilities of Male and Female Judges Settling. In every district and in every model, female judges have a higher predicted probability of settling than male judges. As none of the confidence intervals includes 0, each difference is statistically significant.

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