Publication and Strategy in the U.S. Courts of Appeals: Online Appendix

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A Data Collection and Scope

Since data limitations plague many questions of import relating to the federal circuit courts, I have utilized a combination of automated techniques and hand coding to compile an original dataset of nearly all dispositive opinions issued by U.S. Courts of Appeals from 2002 to 2012. This dataset contains over 210,000 cases suitable for analysis. While it is not absolutely the entire universe, it is as comprehensive as feasible. The data were collected by downloading every available U.S. Court of Appeals opinion from Lexis from 2002 to 2012. Specifically, date-based queries were used in Lexis's Federal Courts of Appeals database to obtain all cases within a given 2-4 week time frame. The large volume of cases necessitated the use of relatively short time frames for each search. These searches generated more than 300,000 documents. Many of the search results were brief documents that addressed motions or other interim matters rather than providing a final disposition of the case. These non-dispositive rulings were excluded from the dataset. Many key variables of interest for circuit court cases are provided in the Federal Judicial Center's Integrated Database.[1] Consequently, I linked my dataset of opinions to that database using the first listed docket number in each opinion. The Integrated Database does not contain cases from the Federal Circuit. Due

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[1]These data are available at `https://www.fjc.gov/research/idb`.

to this fact and the unique substantive nature of the Federal Circuit's jurisdiction, I exclude these opinions and focus solely on the twelve geographic-based circuits. Just over 95% of opinions from the eleven numbered circuits and the D.C. Circuit were matched to the FJC's Integrated Database.

The vast majority of circuit cases are resolved by three judge panels. In order to focus on these panels, I exclude opinions issued either by the full circuit en banc or by a single judge (or where only a single judge is listed in the opinion). In order to address the research questions in this paper two other types of opinions are excluded from analysis as well. The first is opinions where the appellant does not experience a clear cut win or loss. This can happen two ways in the data. In less than five percent of the cases, the appeals court affirms in part and reverses in part. Because of the relatively small number of these cases and the more straightforward interpretation of a probit model compared to an ordered or multivariate probit model, I follow the example of previous researchers and exclude split decisions (McCormick, 1993; Songer and Sheehan, 1992; Songer, Sheehan, and Haire, 1999). There is another set of cases of about the same size in which the case outcome cannot be determined from the text of the opinion. After all of these processing steps, the dataset contains 214,370 observations.

B   Coding Issue Area

Issue area is coded using a combination of the appeal type (APPTYPE) variable and the "nature of suit" (NOS) code from the FJC's Integrated Database. APPTYPE identifies whether an appeal is administrative, civil, criminal, bankruptcy-related, or a matter of original jurisdiction. NOS codes can take on nearly one hundred different values, but I only used a subset here to designate three additional issue areas: prisoner petitions, civil cases involving civil rights issues, and civil cases involving tort claims. Table A1 provides a list of all NOS codes used to create each of these three issue areas as well as the title assigned to each NOS code. For a complete list of NOS codes and more detailed descriptions see `https://www.uscourts.gov/sites/default/files/js_044_code_descriptions.pdf` (last accessed December 10, 2020).

NOS code	NOS Title	Issue Coding
510	Motions to Vacate Sentence	Prisoner Petitions
530	Habeas Corpus - General	Prisoner Petitions
535	Death Penalty	Prisoner Petitions
540	Mandamus & Other	Prisoner Petitions
440	Other Civil Rights	Civil, Civil Rights
441	Voting	Civil, Civil Rights
442	Employment	Civil, Civil Rights
443	Housing/Accommodations	Civil, Civil Rights
444	Welfare	Civil, Civil Rights
550	Prisoner Civil Rights	Civil, Civil Rights
555	Prison Condition	Civil, Civil Rights
195	Contract Products Liability	Civil, Torts
240	Torts to Land	Civil, Torts
245	Tort Product Liability	Civil, Torts
310	Torts: Airplane	Civil, Torts
315	Airplane Product Liability	Civil, Torts
320	Torts: Assault, Libel & Slander	Civil, Torts
330	Torts: Federal Employers' Liability	Civil, Torts
340	Torts: Marine	Civil, Torts
345	Marine Product Liability	Civil, Torts
350	Torts: Motor Vehicle	Civil, Torts
355	Motor Vehicle Product Liability	Civil, Torts
360	Other Personal Injury	Civil, Torts
362	PI: Medial Malpractice	Civil, Torts
365	PI: Product Liability	Civil, Torts
368	Asbestos PI Product Liability	Civil, Torts
370	Personal Property Fraud	Civil, Torts
385	Property Damage Product Liability	Civil, Torts

Table A1: NOS Codes Used to Create Issue Area Variable

C   Coding Ideological Alignment with the Appellant

Coding ideological alignment with the appellant requires an assessment of whether the appellant in each case is pursuing a conservative or liberal ruling (Songer and Sheehan, 1992; Songer, Sheehan, and Haire, 1999). Following the typical approach in judicial politics literature, I code the ideological direction of the outcome the appellant is seeking by using a combination of information about the issue area and who would win (and lose) if the appellant wins the case. For example, a criminal case in which the defendant is appealing indicates the appellant wants a liberal ruling. Table A2 provides a list of all coding rules. The issue area for civil cases which are neither tort cases nor civil rights cases is too homogeneous to use wholesale coding of ideological direction. Therefore,

I used NOS codes to further classify these cases into subgroups.

In 15% of the cases used for analysis, it was not possible to clearly classify whether the appellant was seeking a conservative or liberal outcome. In some cases ambiguity was created by both parties cross-appealing. In others the issue of the case did not lend itself to ideological classification or the text of the opinion provided insufficient information about whether the plaintiff or defendant brought the appeal. Rather than drop these cases, the ideological alignment variables are created by multiplying them by *Appellant Ideological Direction*, which equals -1 if the appellant seeks a liberal ruling, 1 if the appellant seeks a conservative ruling, and zero otherwise. The Judicial Common Space scores used to capture judicial ideology are scaled so that larger numbers indicate greater conservatism. The multiplication by -1 when the appellant seeks a liberal ruling flips the JCS scale to show how aligned judges are with a liberal appellant. The multiplication by zero when the ideological direction of the appellant cannot be clearly coded allows for ideology to be dropped from consideration for such cases without dropping those cases from the analysis.

Appellant Ideological Direction	Issue/Issue Subgroup	Appellant	Appellee
Liberal	Prisoner Petition	Plaintiff	Defendant
Conservative	Prisoner Petition	Defendant	Plaintiff
Liberal	Civil Rights	Plaintiff	Defendant
Conservative	Civil Rights	Defendant	Plaintiff
Liberal	Civil, Tort	Plaintiff	Defendant
Conservative	Civil, Tort	Defendant	Plaintiff
Liberal	Bankruptcy Appeal	Other	Government
Conservative	Bankruptcy Appeal	Government	Other
Not Specified	Original Jurisdiction	Plaintiff	Defendant
Not Specified	Original Jurisdiction	Defendant	Plaintiff
Liberal	Criminal	Defendant	Government
Conservative	Criminal	Government	Defendant
Liberal	Administrative	Other	Government
Conservative	Administrative	Government	Other
Not Specified	Administrative	Government	Government
Liberal	Consumer Protection	Government	Other
Conservative	Consumer Protection	Other	Government
Not Specified	Consumer Protection	Non-Government	Non-Government
Liberal	Anti-Discrimination	Government	Other
Conservative	Anti-Discrimination	Other	Government
Not Specified	Anti-Discrimination	Non-Government	Non-Government
Liberal	Labor Laws	Government	Other
Conservative	Labor Laws	Other	Government
Not Specified	Labor Laws	Non-Government	Non-Government
Liberal	Economic Protections	Government	Other
Conservative	Economic Protections	Other	Government
Not Specified	Economic Protections	Non-Government	Non-Government
Liberal	All remaining civil cases	Other	Government
Conservative	All remaining civil cases	Government	Other

Table A2: Coding Ideological Direction of Outcome Appellant is Seeking

D   Summary Statistics

	25%	50%	75%
Continuous Variables			
Ideological Distance: Panel to Supreme Court	0.19	0.29	0.38
Ideological Distance: Panel to Circuit	0.05	0.13	0.39
Legal Novelty	0.00	0.20	0.41
Cases per Judge (in 100s)	3.39	4.37	5.04
Year	2004	2007	2009
Supreme Court Alignment with Appellant	-0.07	-0.03	0.00
Circuit Alignment with Appellant	-0.28	0.00	0.21
Panel Alignment with Appellant	-0.31	-0.02	0.19
Dichotomous Variables	**0**	**1**	
Opinion Published	78.1%	21.9%	
Appellant Wins	89.9%	10.1%	
Ideologically Split Panel	27.8%	72.2%	
Amicus Participation	98.3%	1.7%	
Oral Argument	66.4%	33.6%	
District Judge Published	95.1%	4.9%	
Pro Se Appellant	73.6%	26.4%	
Citation Rule Change	43.0%	57.0%	
Issue Area			
Criminal	33.9%		
Prisoner Petitions	13.4%		
Administrative	14.4%		
Civil, Civil Rights	18.9%		
Civil, Torts	2.9%		
Civil, Other	14.5%		
Bankruptcy	1.5%		
Original Jurisdiction	0.5%		
Circuit			
First	2.0%		
Second	6.8%		
Third	8.0%		
Fourth	15.5%		
Fifth	13.2%		
Sixth	6.7%		
Seventh	5.2%		
Eighth	6.1%		
Ninth	20.1%		
Tenth	6.0%		
Eleventh	7.8%		
District of Columbia	2.6%		

Table A3: Summary Statistics for All Variables

References

McCormick, P. (1993), "Party Capability Theory and Appellate Success in the Supreme Court of Canada, 1949-1992," *Canadian Journal of Political Science*, 26, 523–540.

Songer, Donald R., and Reginald S. Sheehan (1992), "Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals," *American Journal of Political Science*, 36(1), 235–258.

Songer, Donald R., Reginald S. Sheehan, and Susan B. Haire (1999), "Do the Haves Come Out Ahead Over Time-Applying Galanter's Framework to Decisions of the U.S. Courts of Appeals, 1925-1988," *Law & Society Review*, 33, 811–832.