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Empirical Research on Decision-Making in the Federal Courts

Introduction

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The invention of the desktop computer and the widespread use of the Internet has revolutionized life in many ways over the last twenty-five years. It has also fundamentally changed the way in which we are able to study law. Since the 1980s, a vast amount of data has been collected about courts, both in the United States and abroad. We now have the requisite computing power to process and analyze these data, ultimately with the goal of learning how law works. Many law schools now house scholars who conduct *empirical legal scholarship*: scholarship that uses data and modern social scientific methods to understand law. At Washington University in St. Louis, the Center for Empirical Research in the Law[1] provides infrastructure for this type of scholarship.

Volume 29 of the *Washington University Journal of Law and Policy* contains eight excellent examples of this type of work conducted by scholars working in the legal academy, the social sciences, and their intersection. The articles focus broadly on decision-making in the federal courts. The authors use innovative

1. http://cerl.wustl.edu (last visited May 2, 2009).

data sources and state-of-the-art methodology to study all three levels of the federal judiciary.

Three of the articles in the volume look at decision-making in the federal district courts. The Article by Professors Eisenberg, Miller, and Perino titled, "A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions After *Goldberger v. Integrated Resources, Inc.*," looks at how district courts responded to the *Goldberger* decision.[2] In this case, the circuit court held that strict scrutiny should be used by district court judges in attorneys' fee applications in class actions. After controlling for other relevant factors, the authors find no decline in fees or increased scrutiny in comparisons of rulings before and after the decision. Rather, they find that the size of awards is tied to the size of the settlement.

Christina L. Boyd and Professor Spriggs look at the connection between federal trial courts with the Supreme Court in their Article, "An Examination of Strategic Anticipation of Appellate Court Preferences by Federal District Court Judges." Using a database of citation data, they find that ideology affects the cases trial court judges choose to site. Professors Kim and Schlanger, Christina L. Boyd, and I discuss the complications of studying district court cases in our Article titled, "How Should We Study District Judge Decision-Making?" Unlike studying the Supreme Court or legislative institutions, studying trial courts requires a recognition about the diverse type of work trial court judges have, and the importance of selection when studying cases.

The importance of ideology and the methodology used to detect it in the Federal Courts of Appeals is the focus of two articles in the volume. Professors Benesh and Czarnezki, in their Article titled, "The Ideology of Legal Interpretation," look at decision-making in the Seventh Circuit Court of Appeals. After controlling for ideology, they find that the interpretive strategies judges use affect case outcomes. The use of legislative history produces more liberal outcomes while originalist analysis yields more conservative ones. This suggests that different methods produce different outcomes, ideology notwithstanding. Professors Fischman and Law answer the

2. 209 F.3d 43, 45 (2d Cir. 2000).

question, "What Is Judicial Ideology, and How Should We Measure It?" They perform an audit of commonly used measures in the field and offer their own measures as well.

Finally, three articles in the volume look at the United States Supreme Court. Professors Baird and Jacobi study the relationship between Supreme Court Justices and future litigants in their Article, "Judicial Agenda Setting Through Signaling and Strategic Litigant Responses." They show that the Justices strategically signal future litigants about what type of future cases and what types of legal arguments they would like hear. This suggests that the Supreme Court can shape its own agenda not only through the certiorari process. Professor Johnson, Ryan C. Black, Professor Goldman, and Sarah A. Treul look at oral argument in the Supreme Court in their Article, "Inquiring Minds Want to Know: Do Justices Tip Their Hands with Questions at Oral Argument in the U.S. Supreme Court?" A number of scholars, including Professors Johnson and Goldman, have shown the important role oral argument plays in deliberations on the Court. In this Article, they show that attention paid by the Justices is an indicator of who is likely to win; the side receiving the most questions is more likely to lose. Professor Yates and Elizabeth Coggins integrate political explanations of judging with theories of case selection from law and economics in their Article, "The Intersection of Judicial Attitudes and Litigant Selection Theories: Explaining U.S. Supreme Court Decision-Making." They show that it is crucial to understand case selection when studying case outcomes or drawing inferences about the importance of ideology.