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Circuit breaker

DECIPHERING COURTS OF APPEALS DECISIONS USING THE U.S. COURTS OF APPEALS DATA BASE

The Data Base presents tremendous opportunities for the empirical evaluation of issues of substantive law, court administration, the behavior of litigants, and the behavior of judges.

BY TRACEY E. GEORGE AND REGINALD S. SHEEHAN

Is one circuit significantly more conservative or liberal than the others? Do circuit courts consistently avoid deciding the substance of certain appeals by concluding that the plaintiffs lack standing? Have state governments been more successful than other parties when they appeal adverse district court rulings? Do appeals courts act in a majoritarian or countermajoritarian manner with regard to elected institutions and the general public? The United States Courts of Appeals Data Base, an extensive data set of courts of appeals decisions, can address these and other questions about the circuit courts. This article describes the background, scope, and content of the database, explains how to use it, and illustrates applications to research questions of interest to the diverse law and social science community interested in courts of appeals.

In 1986, political scientist Donald Songer proposed the creation of a database of U.S. courts of appeals decisions modeled after the database of Supreme Court decisions funded and overseen by the National Science Foundation’s Law and Social Science Program (NSF). Songer argued that the database would be indispensable to the systematic study of the courts of appeals, an institution previously neglected by scholars in part due to the difficulty of collecting sufficient data for the empirical examination of its decisions and processes. The NSF agreed, awarding a grant to create the United States Courts of Appeals Data Base.

Songer, serving as the principal investigator, and an appointed Board of Overseers comprised of distinguished political scientists, sociologists, and legal scholars, fixed the time period, sample size, and variables covered in the database. The Board determined that the database should be longitudinal, drawing on cases decided from 1925 to 1996. Although the Evarts Act created the circuit courts of appeals in 1891, the
courts had little lawmaking power until the Judiciary Act of 1925. In it, Congress expanded the courts of appeals’ power by giving the Supreme Court even greater discretionary control over its caseload, thereby allowing the courts of appeals to become the final arbiter in an increasing proportion of federal cases. The Judiciary Act of 1925, combined with unanticipated growth in appellate dockets, increased the appeals courts’ relative importance.

The Data Base does not contain all decisions rendered between 1925 and 1996, as that task would be impracticable given the nearly one million cases decided during that period as well as unnecessary given confidence in statistical sampling methods. The project’s size, though, is ambitious: “Phase I” includes 15,325 cases from 1925 through 1996, “Phase II” includes all cases reviewed by the U.S. Supreme Court and included in the Supreme Court database (approximately 4,000 cases), and “Phase III” includes 2,880 cases from 1989 through 1996.

Phase I and III cases are a sample of all decisions reported with published, reasoned opinions in the Federal Reporter: 15 randomly selected cases from each circuit for each year for the period 1925 through 1960; and 30 randomly selected cases from each circuit for each year for the period from 1961 through 1996.1

Songer and the Board chose to record an impressive number of case attributes, so that the resulting data could be useful to a broad array of public law scholars, lawyers, judges, and other students of the courts. Each case entry contains information with respect to 221 variables that fall into four broad categories: “basic case characteristics,” “participants,” “issues,” and “judges and votes.” (An abridged listing of the variables included in each category is set forth in Table 1; see page 246 for a list of all variables.)

Basic case characteristics are those that provide descriptive information and case history. All participants are identified as one of seven basic types; in addition, up to the first two appellants and up to the first two appellees listed in the case name are further classified as one of a large number of highly specified types. Participants also are labeled to indicate their status below (plaintiff, defendant, or intervener), and original parties who did not participate in the appeal are noted.

Issues are reported in three ways: using the Supreme Court database legal categories; using the West Topics and key numbers in the case headnotes; and using the majority opinion’s characterizations. The issues category also includes the ideological direction of the court’s decision. Finally, judges and votes variables set forth the identity of judges participating in the decision and the direction of their votes.

The 221 variables (each identified by a “field” number and by an acronym) are recorded as a numeric or alphanumeric code that is connected to a certain definition. For example, field 16 is the “SOURCE” variable and records the forum that heard the case immediately before the case came to the court of appeals. The variable takes a single value from 1 through 16; the variable is coded as “1” if the case came from a single-judge federal district court, “2” if the case came from a three-judge district court, “3” if the case came from a state court, and so on through “16.” The coding scheme, which is detailed in the documentation accompanying the Data Base and available as a Word Perfect file, explains in detail the code assigned to each value of the variable of interest.

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<td>Ideological direction of each judge’s vote</td>
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<td>Judges and votes</td>
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1. To be included in the universe of cases from which the sample was drawn, the decision had to report the court’s ruling and to provide at least one rationale upon which the final judgment was based. The form of the decision was not determinative: the universe of cases included some per curiam and some memorandum decisions.

2. The number of cases decided annually by each circuit varies widely across circuits and across years, so the selected cases — a constant number from each circuit in each year (called a “circuit-year”) — do not represent a “random sample” of the universe of cases even though they do represent a random sample of cases from a given circuit in a given year. Users wishing to analyze a random sample for the entire Data Base may do so by weighting each circuit-year utilizing a table of weights provided in Appendix 5 of the Documentation.
Legal doctrine and theory

A rich area for study using the Data Base is the development of legal doctrine in federal courts. The Data Base includes detailed information about the legal issues covered in each case. The coding of legal issues is not as simple as, say, the coding of the docket number. So, Songer and the Board categorized issues in three ways.

First, cases are coded according to the issue labels used in the Supreme Court Data Base to allow for the use of the two Data Bases in tandem. Each case is coded as falling into one of eight broad issue types: criminal, civil rights, First Amendment, due process (non-criminal), privacy, labor relations, economic activity and regulation, and miscellaneous.

Cases are also placed in one of 220 specific subcategories, such as due process rights of prisoners, school desegregation, abortion, right to die, federal individual income tax, motor vehicle torts, insurance disputes, eminent domain, and immigration.

Finally, each decision is recorded as liberal or conservative, reflecting whether the court supports or opposes the general issue to which the case pertains. For example, a criminal decision is “liberal” if the opposite.

The availability of the Courts of Appeals Data Base will allow researchers to extend theoretical perspectives developed in Supreme Court studies to the intermediate appellate courts.

The Data Base presents tremendous opportunities for the empirical evaluation of issues of substantive law as well as issues of court administration, of the behavior of litigants, and of the behavior of judges. While it would be impossible to canvass all of the questions that the data can help answer, considered here are a few in each of these four areas and how they might be answered in part by the Data Base.

Court administration

Issues of court administration have been central to federal courts studies. Court administration decisions must be made with an understanding of how the work of the courts is being handled. In recognition of this, the Administrative Office of the United States Courts was directed in the 1940s to maintain detailed records on federal judicial business. While the AO’s annually published data convey basic statistics on all decisions, it provides only a summary account of the courts’ workload and output. The Courts of Appeals Data Base complements the Administrative Office data by offering details with respect to a sample of decisions, allowing analysis of specifically tailored questions on court administration.

Perhaps the single greatest modern court administration issue is the “crisis” of caseload in the circuits. Countless articles and numerous task forces have warned of the scope of the problem and of the dangers posed by the increasing circuit workload.3

mentators have proposed various solutions, some minor, others dramatic. All of the proposals would benefit from empirical examination.

The White Commission, the latest governmental body to tackle the problem, has proposed, among other things, the creation of two-judge panels to handle certain "easy" or less important cases as a means of expanding the decision-making capacity of the courts of appeals. In order to evaluate the Commission’s proposal, we have to know how many cases are within its scope and whether those cases are likely to be decided differently if only two judges participated in the decision. We can answer these questions with the Data Base. To do so, we would select from the Data Base all cases with characteristics and issues such that they appear to fit the Commission’s case category. The Data Base includes detailed information as to the legal issues addressed in the case as well as the case history. After choosing all cases that appear to satisfy the Commission’s definition of “easy” cases, we would see how often a judge dissented in those rulings. The Data Base includes the judges’ votes in each case; therefore, we can determine whether supposedly easy cases were in fact cases in which all three panelists agreed. If judges dissented as frequently in easy cases as in other cases, then the two-judge panel system may not be workable.

We might also want to consider whether the Commission’s two-judge panel proposal would affect a similar percentage of each circuit’s caseload. We could compare the number of easy cases in each circuit (utilizing the weighting numbers to account for sample size variation) to determine whether the proposed change would have a greater impact on some circuits than on others. Finally, the Data Base’s longitudinal character allows us both to ascertain what proportion of the circuits’ caseload has been made up of “easy” cases over time and to make predictions about what proportion will be “easy” in the future.

The White Commission also considered whether Congress should address the caseload crisis by dividing the most overworked court of appeals, the Ninth Circuit. The heated debate over restructuring the Ninth Circuit is fed in part by differing perceptions of the nature of rulings coming out of the Ninth Circuit as compared to other circuits (i.e., is the Ninth Circuit too liberal?), the Supreme Court’s treatment of the Ninth as compared to other circuits (i.e., is the Ninth Circuit too liberal?), the allegedly divergent role conceptions of California federal judges as compared to other judges (i.e., are the California judges too activist?). These perceptions are informed typically by individual events or recollections, rather than by a systematic view of the Ninth Circuit itself and the Ninth Circuit as compared to other circuits. But, the Courts of Appeals Data Base can address each of these questions in an orderly and exhaustive manner.

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Litigant decision making
Judicial scholars are becoming increasingly attentive to the role and significance of parties in judicial decision making. Most of the research examining parties focuses solely on the United States Supreme Court. In recent years, there has been more interest in the role of party characteristics in determining who wins and loses on the merits in the Supreme Court.\(^5\) Most studies focus on the success of such “repeat players” as the federal government and politically disenfranchised groups.\(^6\) The availability of the Courts of Appeals Data Base will allow researchers to extend these theoretical perspectives developed in Supreme Court studies to the intermediate appellate courts because the Data Base includes extensive information about the participants and their success.

The Courts of Appeals Data Base provides a detailed coding of the appellant and respondent in each case. The coding includes the identification of the second appellant and respondent listed, if there are multiple parties in a case. There are also codes that allow the researcher to determine the total number of parties participating within coded subcategories of parties. The subcategories of parties include natural persons, business, sub-state government, state government, federal government, nonprofits and fiduciaries. The collapsing of the party identification into general categories offers the researcher a simple and fast method of examining parties, but for those interested in more specific types of parties the Data Base extends the categories substantially into more highly specified subcategories. For example, the coding for federal government is extended to identify individual federal agencies appearing before the appeals courts. Similarly, business codes are extended into categories such as transportation, which is then extended further to identify railroads, shipping, trucking, and airlines.

This detailed coding of parties facilitates the exploration of numerous theoretical perspectives regarding litigants. One significant line of inquiry is who participates and how much in the appeals courts. The question of access to government institutions is an essential question underlying democratic theory. The courts are often viewed as the one governmental institution in which the disadvantaged can seek redress of grievances and protection of rights.

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**Using the Data Base**

Although the Data Base holds great possibilities for scholarship, it may intimidate many potential users who are unfamiliar with computerized data. Scholars who are not able to use a statistical programming language, such as SAS, STATA, or SPSSx, will not be able to manipulate the data to generate summary statistics (such as frequencies and relative frequencies) or to test research hypotheses.

Faced with this dilemma, the user can either hire someone with the necessary computer skills or learn those skills. The paid programmer does not need to have any familiarity with law or courts — anyone who can use a statistical programming language should be able to construct programs to answer the researcher’s questions. Or, the user can invest time in learning a programming language, a task that has gotten much easier in recent years and pays dividends in the ability to utilize data in future projects.

When undertaking a project using the Data Base, the user should begin by reviewing the 269-page Documentation file. As explained below, the Data Base Documentation file can be downloaded from either of two websites. The Documentation lays out in detail the variables included in the data set as well as the methodology adopted for recording each variable. The user should be able to determine whether the data includes information relevant to her inquiry by considering its contents.

The Data Base and its documentation can be obtained from the Inter-University Consortium for Political and Social Research ("ICPSR") or the Program for Law and Judicial Politics sponsored by the Michigan State University Political Science Department ("PLJP"). ICPSR, a not-for-profit organization serving member institutions and housed at the University of Michigan, maintains the world’s largest archive of computerized social science data. The official ICPSR representative at any ICPSR-member institution (nearly all universities and colleges belong) can retrieve the data on-line or through the ICPSR’s ordering facility, Consortium Data Network (CDNet).

In the alternative, researchers affiliated with a member institution can create an individual membership account and download the data directly. The Documentation can be downloaded freely from the ICPSR’s webpage. You can access more information about ICPSR, including its other holdings and a listing of member institutions, at its home-page (http://www.icpsr.umich.edu/).

The data are freely available (and easier to download) by accessing PLJP’s webpage (http://www.ssc.msu.edu/~pls/pljp/index.html). The U.S. Courts of Appeals Data Base is available in a format for use with either SAS or SPSS programming language as well as in an ASCII format, a general or universal form.\(^1\) The Documentation file for the Data Base is also available in Portable Document Format ("PDF").\(^2\)

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1. The data set can be downloaded quickly because it is stored in a compressed form ("zipped"). Before using the data, the user must uncompress it (i.e., “untar” it) using a program such as WinZip or PKZip. These programs can be downloaded without charge via a link on the PLJP Archive page.

2. Adobe Acrobat Reader, a free program available on the Web that allows you to read PDF files, can be reached via a link on PLJP’s page.

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6. Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, 9 Law and Soc’y Rev. 95 (1974) (proposing that litigants with “repeat player” status and more financial resources are more likely to be successful in court).
Examining participation rates across time would provide insights into whether the courts perform this role and the extent to which the courts' role may have changed over time.

The role of federal agencies in Supreme Court litigation has received considerable attention over the years. Most of the studies conclude that federal agencies are more successful in litigation than other types of litigants. Some of the studies identify differences across agencies in success rates and attribute this to agency characteristics. Since the majority of federal agency cases never move beyond the appeals courts, it would follow that more attention should be given to the role of agencies at this level.

The detailed coding of parties in the Data Base allows researchers to examine success rates of different types of agencies across time. It is not clear if federal agencies maintain their high rates of success over time or if some agencies are more likely to fall out of favor than others. If some agencies do fall out of favor, we do not know if this is a result of changes in the social and political environment in which they operate or whether it reflects changes in the political climate that are not favorable to a particular agency. Utilizing the data on judge characteristics in the Data Base combined with the parties coding of federal agencies allows one to determine if judges are more supportive of agencies under different presidential administrations. The Data Base will allow researchers to explore these relationships more thoroughly and to draw comparisons with findings reported in the Supreme Court.

There are many other interesting theoretical perspectives that could be pursued with this rich identification of parties. The perspectives mentioned here are drawn from work at the Supreme Court level and while these are fruitful avenues of research in the lower courts, we are convinced there are perspectives unique to the appeals courts that will develop as scholars begin to use the Data Base.

**Judicial behavior**

Scholars and practitioners will find the Data Base useful in exploring various aspects of judicial behavior. While studies of judicial decision making in the U.S. Supreme Court abound, the limited availability of data has always constrained our ability to conduct similar studies in the courts of appeals. A primary purpose for the creation of the Data Base was to develop and test theoretical perspectives, some of which originate in the Supreme Court literature, regarding factors influencing judicial decision making.

The Data Base consists of codes for the votes of panels and individual judges in the courts of appeals. Besides coding the actual vote to affirm or reverse, the principal investigator also coded the ideological direction of the vote and decision. The ideological direction and vote variables provide powerful tools for those interested in judicial behavior. The researcher can determine how individual judges vote in particular issue areas, both from an ideological and a legal perspective. Moreover, the data can easily be used to examine presidential appointment effects on individual judges and on circuit panels.

The existing work in this area typically has been limited to short periods of time, but the Data Base allows for the exploration of 72 years and numerous presidential administrations.

The primary use of the vote data will be to develop models of decision making. Models examining the influence of both legal and socio/political factors on judicial behavior in the appeals courts are much more accessible with this data. Collecting and obtaining other sources of data will further enrich the uses of the Data Base and its utility in explaining judicial behavior. The addition of public opinion data, detailed identification of amicus curiae participants, socio-economic indicators, political variables, and social background characteristics of judges will give the researcher the resources to pursue lines of inquiry equivalent to those in the Supreme Court literature.

To what extent are appeals court judges influenced by their attitudes and values in deciding cases? Do appeals courts act in a majoritarian or counter-majoritarian manner with regard to other elected institutions and the general public? What is the role of interest groups in deciding outcomes in the appeals courts? Are there differences across circuits in decision making? Do factors influencing decision making remain constant across time?

The Data Base is the platform upon which we can begin to pursue answers to these and many other questions regarding judicial behavior. The vote data combined with the parties, nature of the issues, legal provisions, presidential appointment, amicus presence, and circuit controls allow for the testing of models that move beyond work previous to the Data Base. As users become more creative with their use of the Data Base and additional data is collected in pursuit of individual research questions we would expect to see our understanding of judicial beh-

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behavior in the appeals courts reach comparable levels found in the Supreme Court.

Promoting understanding
The U.S. Courts of Appeals Data Base provides a single reliable and systematic compilation of cases from all circuits. Before the Data Base, scholars interested in testing even a simple hypothesis were required to construct a data set, a time-consuming task that discouraged many interested researchers. Today, scholars can take advantage of this nearly exhaustive collection of information on courts of appeals decisions in order to examine their research questions. The Data Base’s potential may be predicted by considering the great success of the database on which it is modeled, the U.S. Supreme Court Judicial Data Base.

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Base should stimulate interest in the politics of the courts of appeals and promote efforts to move our understanding of courts of appeals forward by providing a means of examining and testing complex theories. Now these hypotheses can be tested empirically and systematically, not merely by reliance on idiosyncratic, anecdotal evidence.

Of course, data collection is not a substitute for principle construction. Facts without theory do not add to our understanding of law or legal systems. Thus, the Courts of Appeals Data Base has no value absent sound and frequent utilization of its contents to examine reasoned hypotheses and research inquiries. We hope that the Data Base will be at the heart of future research on courts of appeals, for it deserves that attention.