Reassessing Random Assignment on the U.S. Courts of Appeals
Summer Research Proposal

Jeremy R. Johnson
Jeremy.Johnson@psu.edu

Pennsylvania State University

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Introduction

The United States Courts of Appeals are broken into eleven geographic circuits plus the D.C. Circuit and the Federal Circuit. These courts' primary responsibility is to hear appeals from the 94 U.S. District Courts. Traditionally these courts hear cases in panels of three judges. In normal practice, panels are randomly chosen then a series of cases are randomly assigned to these panels (Hooper, Miletich and Levy, 2011; *A Journalist's Guide to the Federal Courts*, 2011; Chilton and Levy, 2014; Songer, Kuersten and Haire, 2007).[1] These assignments are made to all current circuit judges and available senior judges. There is variation from circuit to circuit on panel length and the number of cases that each panel hears before judges are assigned to a different panel as well as the number of judges on the circuit; however, the randomness is nominally standard across all circuit courts.

Due to an increasing interest in assessing causality, many articles have leveraged this randomized assignment to learn about the impact on judicial decision making and racial and gender characteristics of Court of Appeals judges (Kastellec, 2010; Glynn and Sen, 2015; Farhang, Kastellec and Wawro, 2014). While this process is generally taken to be the normal procedure in the Federal Appellate courts, a substantial literature has challenged this as fact (Atkins and Zavoina, 1974; Brown and Lee, 2000; Chilton and Levy, 2014). Chilton and Levy (2014) performed Monte Carlo simulations and concluded that the observed partisan breakdown of panel assignments for a five year period could not have happened using random assignment. Atkins and Zavoina (1974) as well as Brown and Lee (2000) examine "panel packing" during the 1960's. In addition, Brown and Lee (2000) examines modern practices qualitatively to determine if such practices could still go on today, determining that the courts have enough rule making discretion to do so.

Chilton and Levy (2014) have shown that the panel assignment process is not entirely random. If it is not entirely random, what then can help us predict how panels are assigned? The most likely hypothesis for answering this question surrounds partisanship, both of the judges on the panel, as well as the chief judge, who exercises administrative control over the circuit. As an extension of that administrative control, what role does the Circuit Executive and Circuit Clerk play in assignments?

Data

This paper will create a dataset of U.S. Court of Appeals cases docketed for oral arguments during a certain time period, most likely 1995-2005. The data for this project will come from the Songer Court of Appeals Database for the case data (Songer, Kuersten and Haire, 2007). The data for the individual judge level variables will come from the U.S. Court of Appeals Judge Attribute Database (Gryski and Zuk, 2008). Measures of case salience are already coded into the Songer, Kuersten and Haire Dataset which reduces any additional coding, using the method developed by Hettinger, Lindquist and Martinek (2003).

[1] There are obvious exceptions to the random assignment such as judge availability, or conflicts of interest.

Analysis

The analysis of this data will proceed in two phases. The first phase will be to create a simulated dataset of panel assignment probabilities. This will consist of creating a set of available judges for each circuit/year. This can be compiled using the Gryski and Zuk dataset. This can be compared to the caseload statistics available to establish a baseline. The Songer, Kuersten and Haire database is a stratified sample of all Court of Appeals cases from 1925-2002, which is approximately 20,000 case observations. The simulation will establish a baseline of panel and case assignment probability which will show how under or over represented a judge is on the panels. We will then apply a hierarchical generalized linear model with various judge level and circuit level effects.

Tasks to Be Performed / Timeline

The most important task will be to assemble the dataset and clean the data for analysis. Both the Songer, Kuersten and Haire and Gryski and Zuk datasets are readily available. The next task will be to match the judge and circuit attributes to the cases in the Songer, Kuersten and Haire dataset. This will be completed by Jeremy over the course of June. All cases for a set period of time will be coded for all case, judge, and circuit level variables, which should also be completed by the end of June. The next step will be to build the model which will be done by Chris and Jeremy and should be completed by mid-July. The final task should be the completion of the manuscript, which will be completed by Chris and Jeremy and should be done during the first week of August. This article should be ready for submission by the beginning of August.

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