STATE DOMINANCE OF A CIRCUIT: AN EXPLORATION

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INTRODUCTION

Might the dominance of one state or one district within a federal judicial circuit affect development of the law of the circuit? This topic seems not to have received attention previously, either in general or even with respect to the Ninth Circuit, where California's dominance has been an issue, yet it is important because cases coming from one state could serve to define the legal rules on important issues for the circuit as a whole, regardless of the variation in circumstances among the multiple states that comprise the circuit. Thus it is important to know if the law of the Second Circuit is largely a function of legal matters arising in New York and decisions made in those cases, whether Ninth Circuit precedent stems largely from California cases, and, to come closer to home, whether and to what extent Illinois dominates the Seventh Circuit, a main focus of this article. Moreover, shifting the level at which we look, we might want to know to what extent certain *districts* dominate the law of a state or of the circuit in which that district is located. Here, one might look at the Southern District of New York, along with the Eastern District, covering the New York City area, and, in this circuit, the Northern District of Illinois, covering Chicago and environs, another focus of this article.

This article, which undertakes exploratory analysis of some aspects of state dominance and district dominance, does not reach analysis of case law and doctrine to determine the source of dominance on particular legal issues. Instead, after some background discussion of state and district dominance, attention is given primarily to the source of the cases decided by the Seventh Circuit Court of Appeals. Put differently, while we present information about numerical aspects of state and district dominance, this article does not–and is not designed to–answer the question of whether such dominance translates into a disproportionate influence over the substance of the law but instead

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helps provide the foundation for such further analysis. For the Seventh Circuit, we utilize a number of measures to help us see what they reveal as to Illinois' dominance within the circuit and whether the district with the greatest litigation activity, the Northern District of Illinois (N.D. Ill.), is dominant. To place the Seventh Circuit and the Northern District of Illinois, our principal foci, in context, we also look at several other circuits and districts within them.

There has been a real-life policy issue concerning within-circuit state dominance, although not one involving the Seventh Circuit. That issue, most recently involving the Ninth Circuit, is whether a circuit should be divided because one state is too dominant, or, when it is decided to divide a circuit, how states should be configured in the new circuits to avoid such dominance. The question of whether the Ninth Circuit should be divided, although quiet at the moment, has been largely driven by the place of California within that largest of circuits, as that state has been said to account for as much as sixty percent of the circuit's caseload and the dominant proportion of the circuit's appellate judges. Moreover, the purported liberalism of the state's Ninth Circuit judges has led to many of the pending circuit-splitting proposals being largely of the "anything but California" variety. As this suggests, the concern seems to arise when critics perceive that the dominating state or district decides cases in a way that is substantively different from the decisions made in other states or districts or in some way out of line with what they consider a proper reading of the law.

Earlier, when division of the old Fifth Circuit was under serious discussion, one proposal would have had only Texas and Louisiana in one circuit, that gave rise to the same concern of dominance of a circuit by one state, although the greater concern may have been that Texas and Louisiana, without any other state, would have been largely an "oil and gas" circuit. While Mississippi was added to create a three-state circuit, the question of Texas' dominance of the circuit remains.

It is interesting that this concern about state dominance within a circuit has not seemed to become an issue even in the Second Circuit, where New York dominates Connecticut and Vermont, or in the Seventh Circuit, as we are not aware that there is any complaint about the place of Illinois, or of the Northern District of Illinois, in this three-state circuit. Yet the existence of concern elsewhere in the federal appellate system would seem to warrant giving the matter our attention.

Determining Dominance Effects

With respect to the Seventh Circuit, we do not have survey information as to whether the public or lawyers see the Seventh Circuit Court of Appeals as a "Chicago" court or whether it is understood to be a multi-state regional entity that is part of a national court system. The equivalent of this important question applies to others circuits as well. When the court sits for argument at only one location, as is true of the Seventh Circuit in Chicago, the notion that it is a "Chicago court" would be reinforced. When the media outside the circuit headquarters city pay little attention to the court–and one might question how much attention is paid by the papers in the headquarters city, as well, the impression that all happens there is reinforced, perhaps leaving other judges with the feeling that their court has no presence outside its principal location.

Without survey data bearing on these matters, or without having asked district judges located elsewhere than in Chicago, how do we determine possible "dominance effects" of a state within a circuit and of one or more districts within a state or circuit? A starting point is the number of appellate filings per state–aggregating the filings if there is more than one district in the state. One might want to compare the proportion of filings by state in the circuit with the proportion of population and, more particularly, with the proportion of filings in the state's federal district courts, keeping in mind that cases are not appealed at uniform rates across all districts or states. However, in terms of effects on the law, rather than on the courts' processing of cases, dispositions are more important, as one state or district might account for a share of the circuit's "work product" that exceeded its proportion of population or of cases filed. In particular, one might examine:

(1) whether cases from the dominant state result disproportionately in published opinions, which are precedential and thus create "circuit precedent," rather than "unpublished" memorandum dispositions, which, although as a result of a new rule change can now be cited, are "non-precedential";
(2) whether cases decided by the courts of appeals sitting en banc came disproportionately from a state; important because en banc rulings displace rulings by three-judge panels and are thought to be more definitive as circuit precedent;
(3) whether cases the Supreme Court has taken from a circuit are disproportionately from one state or district; and
(4) whether certain issues–and "more important" cases, however measured–are more likely to arise from certain districts and states, although this may well change over time.

In ascertaining district dominance, one might also want to separate cases in which the court of appeals affirms the district court from those in which it reverses (although this is beyond the scope of this article). As to affirmances, even if the court of appeals does not adopt the district court's opinion as its own, affirmance means that the district court will have "started the ball rolling" in the right direction. The court of appeals is more obviously the law-maker when it reverses, although it is a *case* from that district that was the basis for the resulting circuit precedent if the court of appeals' reversal is published.

With respect to published and "unpublished" dispositions, we are looking to see if it *happens* that the cases that make up the corpus of circuit precedent, that is, published opinions, come disproportionately from one state and one or more districts, and they could in fact come from smaller rather than larger ones. Given the process by which cases are designated as published opinions or "unpublished" memorandums, with such decisions being made one-at-a-time in terms of the fit of publication criteria to the case, it would not be likely that cases from a particular state or district would receive priority for publication.[1] Thus there is little reason to believe that cases from a particular state or district would be published (or "unpublished") with disproportionate frequency, and thus a state dominance effect of that sort is unlikely to occur.

While it is unlikely that a judge engages in even an internal monologue to the effect that "This case is from N.D. Ill. (or W.D.Wis.), so it is worthy of publication," it is, however, possible that there might be an unconscious bias in which judges from a particular state think cases from that state, or area of that state (like the metropolitan Chicago area) are more worthy of publication. However, there is little reason to believe that court of appeals judges think of cases as deriving from "their" state or "another" state; indeed, they may well not think of the cases as being attached to the state in any particular way, unless some element unique to the policy of a particular state is involved. It is said that a judge from a state is likely to understand the law of that state and, indeed, the Supreme Court has, from time to time, referred in cases being reviewed to the judges of the courts of appeals being more familiar with the situation in which the case arose. However, the question then arises whether the judges selected from particular states bring with them the law of those states so that such law dominates when one state dominates that circuit's caselaw, or, alternatively, whether the judges "rise above" their state backgrounds so that the court of appeals develops a "circuit law" in some sense "cut loose" from the states from which its judges originate.

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1. Stephen L. Wasby, *Unpublished Court of Appeals Decisions: A Hard Look at the Process*, 14 S. CAL. INTERDISC. L.J. 67 (2004).

It is beyond the scope of the present work to determine whether judges hearing cases from "their" state would decide those cases differently from the way the cases would be decided by judges from other states. Such effects, if they exist, might vary by subject-matter, and it would be important to know whether a state's or district's dominance is greater with some issues than others; in particular, there is some reason to believe that, in deciding cases under federal diversity-of-citizenship jurisdiction, the judges on a panel might defer to a judge from the state the law of which was at issue, particularly if that judge had earlier served on the state courts.

Data Used

For this article, data through which we attempt to see whether Illinois and the Northern District of Illinois were dominant were taken from several sources. All population figures have been drawn from the 2000 U.S. Census. Data on caseload was taken from the Annual Reports of the Administrative Office of the U.S. Courts, particularly Table B3, for the years October 1, 2003–September 30, 2004 (SY 2004), October 1, 2004–September 30, 2005 (SY 2005), and October 1, 2005–October 1, 2006 (SY 2006). For published opinions, data was recorded from volumes of *Federal Reporter Third Series* covering cases from 2004–2006, as were volumes of *Federal Appendix* for roughly the same period for "unpublished" rulings. Data on U.S. Supreme Court cases were derived from the *United States Reports*, and, for en banc cases and those in which there were published dissents to denials of rehearing en banc, data were collected by the authors.

For the periods examined, all cases–not a sample–were coded. Because of volume-to-volume variation in "Fed Third" and *Federal Appendix,* a result of the relatively small number of cases from a circuit in any single volume, cases were aggregated across sets of volumes. For Volumes 359–371 and 375–399 of "Fed. Third," data were recorded not only for the Seventh Circuit, but also for the Second, Third, Fifth, and Ninth Circuits. For Volumes 415–424 and 451–469, data were also gathered for the Eleventh Circuit. For *Federal Appendix*, data were gathered from the same circuits for Volumes 106–134, and then for Volumes 165–179. While in some courts of appeals, the proportion of unpublished dispositions exceeds eighty percent, the Seventh Circuit disposes of a smaller proportion of cases by that means than many other circuits; one reason may be that the court has relatively few immigration cases, which are often resolved by unpublished dispositions.[2]

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2. Stephen L. Wasby, *Publication (or Not) of Appellate Rulings: An Evaluation of Guidelines*, 2 SETON HALL CIRCUIT REV. 41, 87 (2005).

Examination of en banc rulings and cases in the Supreme Court has, apart from data in the Seventh Circuit, been limited to data on the Ninth Circuit, and that data was collected by one of the authors for a larger project on that Court's decision-making. Seventh Circuit en banc cases for 1972–2006 are used, as are cases with dissents from denials of en banc for 1990–2006; for the Ninth Circuit, the time span is 1970–2005.[3]

How We Proceed

We now turn to examine various ways of examining state dominance of circuits, after which we turn to district dominance of states and possibly of circuits. To help identify state dominance, in which we are most interested, and district dominance, we use several measures as different single elements might provide different pictures. After state population figures are provided, the elements used are the number of court of appeals judges–both active-duty and senior; cases filed; published opinions; so-called "unpublished" dispositions; cases heard en banc; those cases to which en banc rehearing was denied but in which one or more judges filed dissenting opinions; and Supreme Court rulings on the merits in certiorari cases.

One further point to be made concerns cases that come directly to the courts of appeals from administrative agencies. They are an important part of an appeals court's workload, and thus cannot be disregarded. If there are many of them, as is true of immigration cases in certain circuits, particularly the Second and Ninth Circuits, then the place (possible dominance) of any state or district within the circuit is diminished as cases coming to the court of appeals from the district courts will bulk less large in the caseload and perhaps in the circuit judges' minds. However, there are few such cases from agencies like the National Labor Relations Board (NLRB), the Securities and Exchange Commission (SEC), the Environmental Protection Agency (EPA), or the Department of Labor (OSHA and the Benefits Review Board). The exception, an important one, is *immigration cases*, and most circuits have relatively few of those. However, as such cases constitute a significant portion of the caseload in some circuits, to provide a clearer picture, we take a separate look at the proportion of court of appeals cases coming to the circuit only from the district courts. This is particularly important in calculations concerning "unpublished" dispositions, the treatment most immigration cases receive.

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3. Although we have not included district court filings in our analysis here, one could also examine them to determine if cases are appealed disproportionately from some states or from some districts.

The other circuits were selected on the basis of "common knowledge" to be ones in which one state would dominate the circuit. These are, in addition to the Ninth Circuit (California), the Second Circuit (the state of New York), Third Circuit (Pennsylvania), Fifth Circuit (Texas), and the Eleventh Circuit (Florida). For the Second and Ninth Circuits, we also look at district dominance: in the Second Circuit, at the districts of Southern New York, individually and combined with Eastern New York (thus covering the New York City metropolitan area), and, in the Ninth Circuit, Central California (Los Angeles), individually and together with Southern California (San Diego).

FINDINGS: STATE DOMINANCE

Population; Seventh Circuit Judges

The dominance of Illinois in the Seventh Circuit in terms of population is quite clear. On the basis of the 2000 Census,[4] Illinois accounts for slightly over half (52.0%) of the circuit's population of almost 24 million people (23,863,453). Indiana comprises one-quarter of the circuit's population (25.5%) while Wisconsin's population accounts for just over 20 percent (22.5%). By comparison, slightly more than half (6 of 11, or 54.5%) of the active judges in the Seventh Circuit are from Illinois;[5] if we include senior judges, Illinois judges account for just half. We might also note that, in the Ninth Circuit, which has more than twice the Seventh Circuit's number of active judges, roughly half of that circuit's judges in active service can be attributed to California, a proportion that is less than the state's proportion (62.1 %) of the circuit's population. This is perhaps not surprising because there has been no bill establishing new judgeships for quite some time, thus increasing the lag between population figures and possibly taking population shifts into account in creating new judicial positions.

In other circuits examined, we find that eighty-two percent of the Second Circuit's population resides in New York, while, of the thirteen active judges in the Second Circuit, ten including the Chief Judge (76.9%), are from New York. Thus, the proportion of active judges in the Second Circuit from New

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4. In the STATISTICAL ABSTRACT (2006 ed.), these figures are for the states in Table 1.7, Resident Population-States: 1980 to 2004 (at p. 21.). Similar population figures for Guam and the Northern Mariana Islands, part of the Ninth Circuit, are in table 1298 Estimated Resident Population With Projection: 1970 to 2010 (at p. 845).

5. Annual Reports of the Administrative Office of the U.S. Courts, Federal Judicial Caseload Statistics, particularly Table B3, available at http://www.uscourts.gov/judbususc/judbus.html.

York is similar to, albeit slightly less than, the proportion of that state's population within the circuit. Texas, however, accounts for almost three-quarters of the Fifth Circuit's population (74.0%), but only 50 percent of the circuit's active judges (seven of fourteen). In the Eleventh Circuit, we find more parity with respect to the distribution of judgeships across states but disjunctures between population proportion and the state's shares of judges. Florida, for example comprises 55.8 percent of the circuit's total population, but only five of the twelve active judges in the circuit are from this state (41.6%), while one-third of the judges are from Georgia, which makes up 28.6 percent of the population, and the remaining three, or 25 percent of the circuit's judges, are from Alabama which makes up 15.5 percent of the population.

The politics of judicial selection means that the judges of the U.S. courts of appeals are selected from particular states, not "at large," as is true for the Supreme Court or even the District of Columbia Circuit. Despite the mythology that senatorial courtesy does not operate in selection for the courts of appeals, there is clearly an understood allocation of seats within the circuit, and a president ignores that allocation at his peril.[6] However, court of appeals judges *serve* the entire circuit; once appointed, although they bring their own, often state-based experience to the court, there is no reason to believe that they view themselves as "representatives" of that state. That the judges within a circuit have been selected predominantly from one state does not mean that the judges "from" a state would vote as a bloc. Moreover, given ideological differences among appointees, and certainly between appointing presidents, judges from the same state are at least as likely to be divided ideologically as they are to be united.

Caseload

In the Seventh Circuit, cases from Illinois accounted for somewhat less than half (48.0%) of all the circuit's cases in SY 2004, slightly less (45.8%) in SY 2005 and (45.9%) in SY 2006, but Illinois' proportion of only those cases which came to the circuit from the districts did exceed half–58.1 percent, 55.7 percent, and 55.8percent, respectively, for the three years. Thus, Illinois' proportion of cases filed from the circuit's districts is 55 percent or greater, exceeding slightly the state's proportion of the circuit's population (52%).

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6. STEPHEN L. WASBY, THE SUPREME COURT IN THE FEDERAL JUDICIAL SYSTEM 100 (4th ed. 1993).

For comparison, in SY 2004 and 2005 cases from New York state, which comprised over 82 percent of the population for the circuit, accounted for half of all the Second Circuit's filings and slightly less than half (48.8%) for SY 2006, and for roughly *ninety percent* (90.9%, 89.7% and 89.4%) of the circuit's cases that came from the judicial districts rather than from administrative agencies or being original proceedings. In the Fifth Circuit, in the three years, Texas, with 74.0 percent of the circuit's population, accounted for two-thirds of all cases, but somewhat over three-fourths of those cases from districts (75.9%, 78.5% and 79.2%). However, in the Eleventh Circuit, Florida, with 55.8 percent of the circuit's population, accounted for only roughly half of the cases: in SY 2004, 49.4 percent; in SY 2005, 50.4 percent; and in SY 2006, 46.2 percent of all cases, and for roughly three-fifths of cases from the districts alone: 59.5 percent, 61.6 percent, and 60.4 percent for the three years. For further comparison, we examined California which accounted for 62.1 percent of the Ninth Circuit's population. We find that in Statistical Year 2004, cases filed in the U.S. Court of Appeals for the Ninth Circuit that came from the four California districts account for 30 percent of all the cases filed, including original proceedings and those from administrative agencies, but account for over half (56%) of the cases that came from the judicial districts in the circuit. In SY 2005 and SY 2006, the former proportion is slightly smaller–28.2 percent and 29.1 percent respectively–and the latter is almost exactly the same. (For details, see Table One.)

TABLE ONE: STATE DOMINANCE

	CLI	*CL2*	*CL3*	*Ops1*	*Ops2*	*Ops3*	*Ops4*	*Unpub1*	*Unpub2*	*Unpub3*
Illinois	1,736	1,736	1,667	91	246	198	174	183	183	110
Seventh	3,789	3,115	2,987	153	394	315	326	374	334	204
Circuit	(45.8%)	(55.7%)	(55.8%)	(59.5%)	(62.4%)	(62.9%)	(53.4%)	(48.9%)	(54.8%)	(53.9%)
New York	3,537	3,537	3,439	121	220	137	175	633	633	199
Second	7,035	3,942	3,841	140	261	193	239	841	716	776
Circuit	(50.2%)	(89.7%)	(89.5%)	(86.4%)	(84.3%)	(71.0%)	(73.2%)	(75.3%)	(82.4%)	(25.6%)
Penn.	2,414	2,414	2,291	46	119	81	72	647	647	240
Third	4,498	3,373	3,291	90	156	151	125	1,159	961	469
Circuit	(53.7%)	(71.6%)	(69.75%)	(51.1%)	(76.3%)	(53.6%)	(57.6%)	(55.8%)	(67.3%)	(51.2%)
Texas	5,976	5,976	6,303	70	169	140	150	1,419	1,419	942
Fifth	9,052	7,612	7,954	114	223	204	212	1,925	1,800	1,143
Circuit	(66%)	(78.5%)	(79.2%)	(61.4%)	(72.5%)	(68.6%)	(70.8%)	(73.7%)	(78.8%)	(82.4%)
California	4,519	4,519	4,265	122	201	169	125	930	930	475
Ninth	16,037	8,076	7,615	259	489	379	268	3,200	1,739	1,463
Circuit	(28.2%)	(56%)	(56%)	(47.1%)	(41.1%)	(44.6%)	(46.6%)	(29%)	(53.5%)	(32.5%)
Florida	4,854	4,854	3,483			91	114	930	990	307
Eleventh	7,731	6,330	5,766	- - - -	- - - -	167	173	1,584	1,554	574
Circuit	(62.8%)	(76.7%)	(60.4%)			(54.5%)	(65.9%)	(58.7%)	(59.8%)	(53.5%)
= = =	*EB1*	*EB2*	*EB Deny*		*SCt1*	*SCt2*	*SCt3*			
Illinois	19	24	32		34	17	51			
Seventh	27	41	54		46	24	70			
Circuit	(70.4%)	(58.5%)	(59.3%)		(73.9%)	(70.8%)	(72.9%)			

Notes for Table One:
CL 1: Court of appeals filings, SY 2005 (Oct 1 2004-Sept 30 2005), all cases
CL 2: Court of appeals filings, SY 2005, from judicial districts
CL 3: Court of appeals filings, SY 2006, from judicial districts
Ops 1: Published opinions, 359-371 F.3d
Ops 2: Published opinions, 375-399 F.3d
Ops 3: Published opinions, 415-434 F.3d
Ops 4: Published opinions, 451-469 F.3d
Unpub 1: All not-for-publication dispositions, 106-134 Fed. App'x
Unpub 2: Not-for-publication dispositions, 106-134, cases from districts only
Unpub 3: All not-for publication dispositions, 165-179 Fed. App'x.
EB1: En banc rulings 1972-1989, EB2: En banc rulings 1990-2006
EB Deny: En banc denials 1990-2006
SCt1: OT 1991-1998 merits rulings
SCt2: OT 1999-2005 merits rulings
SCt3: OT 1991-2005 merits rulings

Published Opinions

Whatever the case filings may be in a court of appeals from various sources, it is the court's published opinions that create circuit precedent, making them perhaps the most important indicator of dominance by a state in the circuit. While the proportions of cases filed from particular states might be the same as the proportions of dispositions on the merits from those states, many cases "fall out" of the system on procedural grounds and those non-merits dispositions might come disproportionately from, say, original proceedings. We look first at all published opinions and then at unpublished dispositions. Almost all of both of these sets of decisions come from three-judge panels; rulings of the court sitting en banc are examined in the subsequent section. In the Seventh Circuit, Illinois accounted for only 55.2 percent of all published cases from 415–434 F.3d (62.9 percent if we exclude appeals from BIA rulings) but shortly before that time, the state accounted for around three-fifths of all cases (59.5% from 359–371 F.3d, 62.4% from 375–399 F.3d), the proportion repeated for cases in 451–469 F.3d (59.4%). For all but one of the periods examined, cases with published opinions originating in Illinois, running at about three-fifths of those released by the circuit, exceed the proportion of the circuit's appellate filings that originated there, one indication of the state's dominance in the circuit because it is these cases that create circuit precedent. It is also true that the proportion of published rulings may not accurately reflect the *quality* or impact of those decisions throughout the circuit.

Among other circuits examined for comparison, in the Eleventh Circuit, Florida accounts for half of all cases from 415–434 F.3d and a slightly higher proportion of cases with BIA appeals excluded (54.5%), but in the more recent period (451–469 F.3d), almost three-fourths (72.6%) of the circuit's cases came from Florida. The picture is similar for the Third Circuit, except for one set of cases. For two of the three sets of published opinions, Pennsylvania accounts for just over half of all the circuit's published opinions (51.1% for 359–371 F.3d; 53.6% for 415–434 F.3d), but the proportion was as high as three-fourths for 375–399 F.3d, and was almost two-thirds (65.8%) for recent cases (451–469 F.3d); this illustrates that a state's relative dominance can vary over time.

In the Fifth Circuit, however, for Texas, the three-fifths mark (61.4% from 359–371 F.3d) is the lowest, and its proportion regularly runs higher – over two-thirds (68.6%) in cases from 415–434 F.3d and even higher in cases from 375–379 F.3d (72.5%) and in 451–469 F.3d (74.3%). Yet the most obvious state dominance in published opinions occurs in the Second Circuit,

where New York accounts for well over four-fifths of all cases in two case sets (86.4% for 359–371 F.3d; 84.3% for 375–399 F.3d). While the state's proportion of all cases seemed to fall (to 71 percent) for 415–434 F.3d and 73.2 percent for 451–469 F.3d, the proportion becomes extremely high (over 85%) if we take away the significantly increasing number of immigration agency cases in that circuit.

It is interesting that, for all the controversy over its dominance, California accounted for under half the published opinions in the Ninth Circuit in the period examined. More specifically, California accounts for 47.1 percent of all cases in 359–371 F.3d but only somewhat over two-fifths in succeeding segments. However, if the fairly substantial number of direct immigration appeals from the BIA are excluded, the proportion is about half. It exceeds half in cases from 359–371 F.3d (57.8%) and 451–469 (53.4%) but just fails to reach that level in cases from two other periods.

"Unpublished" Rulings

If published opinions embody circuit precedent, the bulk of most dispositions have been memorandum dispositions–initially "unpublished," at least in the official reporters, but now available on-line and in the *Federal Appendix*–which have been non-precedential. Until new rules were adopted, they could not be cited to the court; now, however, they may be cited, and several of the courts of appeals have recently said they would consider lawyer's arguments that such rulings were persuasive even if not fully precedential. Whatever their precedential status, they account for the great bulk of merits dispositions, and this contributes to the domination of the circuit's workload by particular states and/or districts, which receive the most attention, even if the outcomes don't have immediate precedential importance for the circuit as a whole.

We find that, in the earlier set of cases (106–134 Fed.Appx.), Illinois accounts for almost half (48.9%) of Seventh Circuit memorandum dispositions, although, with one-eighth (12.0%) of the memorandum disposition cases coming from agencies, Illinois' proportion of cases coming only from the districts increases to over half (54.8%). Illinois' proportion of the later set of unpublished dispositions (165–179 Fed.Appx.) is higher–53.9 percent of all cases and 58.8 percent of those from the districts alone.

Pennsylvania in the Third Circuit and Florida in the Eleventh Circuit also account for roughly half of their circuits' memorandum disposition rulings; for Pennsylvania, the proportions are 55.8 percent and 51.2 percent, while for Florida, they are 58.7 percent and 53.7 percent (but 60.3 percent with agency cases excluded). However, the relative dominance of Texas in the Fifth

Circuit is much greater, as that state accounted for almost three-fourths (73.7%) of all the former court's dispositions of this type in the first set of cases and over four-fifths (82.4%) in the second. The picture for New York shows very considerable change, as it accounted for almost exactly three-fourths (75.3%) of the earlier set of such dispositions in the Second Circuit, but, reflecting the very significant increase in immigration cases in that circuit, for 165–179 *Federal Appendix,* New York accounted for *only one-fourth* (25.6%) of cases. This indicates the increase in immigration cases so that they accounted for 70 percent of the circuit's unpublished dispositions in that period; exclusion of those cases shows that over 85 percent of cases–and close to 90 percent in the earlier case set–that came to the Second Circuit only from the district courts came from New York.

That the circuits' varying proportion of immigration rulings affect the proportion of unpublished dispositions accounted for by the dominant state can also be seen in the Fifth Circuit, where agency cases account for only 6.5 percent of all cases, so that, with these cases excluded, Texas' proportion of cases only from districts increases only slightly, and there is virtually no change in the proportion of Florida cases in the Eleventh Circuit. However, in the Third Circuit, where agency cases constituted roughly one-sixth (17.1%) of all cases decided by memorandum disposition in the early set of cases and over one-fourth (28.5%) in the second set, Pennsylvania's proportion of such cases increases to two-thirds. The largest shift in state dominance occurred in the Second Circuit, as shown above.

What about the Ninth Circuit? In the 2004–2005 period covered by 106–134 *Federal Appendix*, California accounted for 29 percent of all Ninth Circuit rulings disposed of by memorandum disposition in the first period and slightly more (32.5%) in the second. In this circuit, agency appeals, mostly immigration cases, account for 45.7 percent of the first set of these cases and 38.4 percent of the second set. If we remove them to leave only cases from federal judicial districts, those from California's four districts accounted for over half of these cases in the two time periods (53.5% and 52.7%, respectively). With cases limited to those from judicial districts, California's dominance is similar to that of Illinois and Florida, but the dominance of those states is less prominent than that of several others–Pennsylvania, and particularly Texas and New York.

As to "unpublished" dispositions, the proportion of cases with such dispositions from Illinois is roughly the same as Illinois' proportion of the circuit's appellate filings. More important, however, is that the proportion of such cases from Illinois is lower than that state's proportion of the circuit's cases with published opinions, as the latter, constituting circuit precedent, are a more important indication of circuit dominance.

En Bancs and Dissents from Denials

To explore further the extent of Illinois' dominance in the Seventh Circuit, we look at the provenance of en banc rulings in that circuit, as well as the origins of those cases in which the court denied rehearing en banc but in which judges filed published dissents from that denial. For the entire period 1972–2006, Illinois accounts for over three-fifths (63.2%) of the Seventh Circuit en bancs, but that masks differences over time, as the state's share of cases receiving en banc treatment was 70.4 percent from 1972–1989 but declined to 58.5 percent in the 1990–2006 period. Just as a high proportion of cases with published opinions is an indication of dominance because of the precedential value of those rulings, a high proportion of cases resulting in en banc rulings also indicate the dominance of their principal source because such rulings cannot be changed by a three-judge panel of the court but only by a further en banc sitting.

If we compare these proportions with California's share of Ninth Circuit en bancs, we find that from 1970–1980, when that court sitting en banc was basically all its active judges, California accounted for 71.4 percent of the en banc rulings. Starting in 1980, through 2005 (425 F.3d), the Ninth Circuit's en banc rulings were the product of its limited en banc (LEB), composed of the court's chief judge and ten other judges drawn by lot. During the period of the LEB through 2005, California's proportion of en banc rulings was only one-half (49.3%), closer to its overall proportion of cases decided on the merits. (With BIA rulings excluded, the figure is only slightly higher–52.5%.)

For cases in which en banc rehearing was denied but in which there was a published dissent–an indication of the importance of the case–we find in the Seventh Circuit, for the period 1990–2006, that Illinois accounts for three-fifths (59.3%) of the cases, a proportion almost identical with that for en banc rulings for that period. In the Ninth Circuit, for such cases, for the longer period 1970–2005, California accounted for slightly smaller share, as more than one-half of those cases (52.2%) came from that state.

Supreme Court

In looking at the state of origin of cases decided by the Supreme Court, we find that, for those from the Seventh Circuit, almost three-fourths (roughly 73%) stem from Illinois for the 1991–2005 Terms, with a somewhat smaller proportion (70.8%) coming from that state in the last few terms, 1999–2005. Here again, drawing a comparison with the Ninth Circuit, we see that for the 1969–1988 Terms, California accounted for three-fifths of all Ninth Circuit

cases which the justices decided (59.4%; 64.9% without agency rulings), with the proportion from California slightly less–56.1 percent–for the 1989 through 2004 Terms (without agency cases, 58.2%).

FINDINGS: DISTRICT DOMINANCE

We now turn from looking at the dominance of a single state within a circuit to look at whether a single district is dominant within a circuit, or whether perhaps two adjacent districts, taken together, are dominant.[7] In this exploration, which involves the Second and Ninth Circuits in addition to the Seventh Circuit[8] we follow roughly the same sequence that was followed in examining state dominance, looking at caseload, dispositions, and Supreme Court cases.[9]

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7. Initially, cases that came to the court of appeals directly from administrative agencies were included in the base from which proportions were calculated. As this depressed the proportion of cases in a circuit from any particular state or district, other calculations were made based solely on cases from the district courts.

   The Administrative Office (AO) Annual Reports provide appellate filings by district court, as well as filings by "administrative agencies," except that those from the IRS and the NLRB are listed separately. Those from the Board of Immigration Appeals (BIA), which account for by far the largest number of administrative appeals, are not shown separately in the AO tables, which also show a separate figure for "Original proceedings."

   The AO information does not allow one to determine the state or district provenance of an appeal from an agency ruling. It *might* be possible to determine the district in which the facts of an immigration case arose so as to attribute it to that district. However, for many cases, the "match" between the locus at which certain facts took place and the court in which the resulting case is filed is difficult, so we could not be sure where to attribute the case. And should we use the alien's point of entry? Where the alien was discovered? Detained? Identifying the locus of cases from some other agencies might be easier, for example, when an OSHA case involved an accident at a particular job site, and benefits cases might be attributed to the claimant's residence, but that often can't be determined from the court opinion.

   For appeals from the U.S. Tax Court, one could attribute cases to particular districts on the basis of the taxpayer's locus when that could be determined, that has not been done for this study, as the Tax Court is a national court although one operating on a decentralized basis, with its judges sitting throughout the country. In the present study, cases from the Ninth Circuit Bankruptcy Appeals Panel (BAP) have not been attributed to a district or state, although one could make that determination.

8. Until very recently, immigration appeals came to the courts of appeals only from the BIA. As a result of statutory changes, many of which limit appeals in immigration proceedings, immigration cases also reach the courts of appeals as direct appeals from other agencies with immigration jurisdiction. For convenience, we refer to them here as BIA cases.

9. Because the Seventh Circuit does not utilize district judges sitting by designation on court of appeals panels, it avoids a problem that can stem from the dominance of a single district. When such judges do sit on appellate panels, it is considered best if they not sit on appeals from decisions by other judges in their own districts. Yet if a court of appeals' caseload is dominated by cases from a single district, avoiding such use may not be possible, and the Second Circuit has not been able to do. There, on occasion, one can find panels containing a judge from the Southern District of New York, the dominant district, sitting on appeals from that district. *See, e.g.*, King v. Fox, 458 F.3d 39 (2d Cir.

Caseload

In the Seventh Circuit, we find clear district dominance by the Northern District of Illinois, which accounts for almost two-thirds of the circuit's cases from the three judicial districts in Illinois and not much under half of all cases filed in the court of appeals (48.0%, 45.8% and 45.9%), including agency appeals and original proceedings; excluding the latter matters, the district accounts for between fifty and sixty percent of cases from the district courts.

By contrast, of all the cases brought to the Ninth Circuit in SY 2004, SY 2005 and SY 2006 the Central District of California accounted for roughly one-sixth (16.7% in SY 2004, but only 14.2% in SY 2005 and 13.9% in SY 2006) of all cases coming to the circuit, but, of those coming to the Ninth Circuit only from judicial districts, the Central District, which accounts for slightly more than one-half of cases from the four California districts, provides between one-fourth and one-third of the court of appeals' cases in the three years (30.7%, SY 2004; 28.2%, SY 2005; 26.8% SY 2006). Adding the fast-growing Southern District to the Central District means that the two districts provide 36.5 percent of the appellate filings from districts in SY 2004, only slightly less (and still more than one-third) in SY 2005 (34.5%) and SY 2006 (34.2%). (For details, see Table Two.)

2006) (panel of two circuit judges and Chief Judge Mukasey of the Southern District of New York, ruling on a case from S.D.N.Y.); and Martin v. Wilhemina Model Agency, 473 F.3d 423 (2d Cir. 2007) (panel of two circuit judges and district Judge Rakoff (S.D.N.Y.), also in a case from S.D.N.Y).

TABLE TWO: DISTRICT DOMINANCE

	CLI	*CL2*	*CL3*	*Ops1*	*Ops2*	*Ops3*	*Unpub1*	*Unpub2*	*Unpub3*
Northern IL	1,097	1,097	1,079	83	159	138	107	107	79
Illinois	1,736		1,667	91	246	198	183		187
	(63.2%)		(64.7%)	(91.2%)	(64.6%)	(69.7%)	(58.5%)		(42.2%)
Seventh Cir.	3,789	3,115	2,987	153	394	359**	334	374	204
	(29%)	(35.2%)	(36.1%)	(54.2%)	(40.4%)	(38.4%)	(37%)	(28.6%)	(38.7%)
Southern NY	1,633	1,633	1,856	74	111	65	294	294	100
New York	3,537		3,436	121	220	137	633		199
	(46.2%)		(54%)	(61.2%)	(50.5%)	(47.4%)	(46.4%)		(50.3%)
Second Cir.	7,035	3,942	3,841	140	261	193**	841	716	776
	(23.2%)	(41.4%)	(48.3%)	(52.9%)	(42.5%)	(33.7%)	(35%)	(41.1%)	(12.9%)
SD + EDNY	2,760	2,760	2,726	101	181	110	485	485	166
New York	3,537		3,436	121	220	137	633		199
	(78%)		(79.3%)	(83%)	(82.3%)	(80.2%)	(76.6%)		(83.4%)
Second Cir.	7,035	3,942	3,841	140	261	193**	841	716	776
	(39.2%)	(70%)	(71%)	(72.1%)	(69.3%)	(57%)	(52.7%)	(67.7%)	(21.4%)
Central CA	2,278	2,278	2,039	54	88	76	450	450	209
California	4,519		4,265	122	201	169	930		475
	(50.4%)		(47.8%)	(44.2%)	(43.8%)	(44.6%)	(48.4%)		(44.0%)
Ninth Cir.	16,037	8,076	7,615	259	489	379	3,200	1,739	1,463
	(14.2%)	(28.2%)	(26.8%)	(20.8%)	(18%)	(20.1%)	(14.1%)	(25.9%)	(14.3%)
CD + SD	2,783	2,783	2,608	70	116	98	592	592	294
California	4,519		4,265	122	201	169	930		475
	(61.5%)		(61.1%)	(57.3%)	(57.7%)	(58%)	(63.7%)		(61.9%)
Ninth Cir.	16,037	8,076	7,615	259	489	379	3,200	1,739	1,463
	(17.4%)	(34.5%)	(34.2%)	(27%)	(23.7%)	(25.9%)	(18.5%)	(34%)	(20.4%)
- - - - - - -	*EB1*	*EB2*	*EB Deny*	*SCt1*	*SCt2*	*SCt3*			
Northern IL	14	19	21	27	15	42			
Illinois	19	24	32	34	17	51			
	(73.7%)	(79.2%)	(65.6%)	(79.4%)	(88.2%)	(82.4%)			
Seventh Cir.	27	41	54	46	24	70			
	(51.9%)	(46.3%)	(38.9%)	(58.7%)	(62.5%)	(60%)			

The Second Circuit's key district, the Southern District of New York, accounted for 46 percent of the appellate filings from New York, and combined with the Eastern District of New York, provided more than three-fourths of those filings (80.3% in SY 2004, 78.0% in SY 2005, and 71.0% in SY 2006.) More important, while the Southern District alone provided 23 percent of total appellate filings in the Second Circuit, it provided slightly over two-fifths of those from the districts alone. The Southern and Eastern Districts together, however, provided roughly forty percent of total Second

Circuit filings and roughly seventy percent of the cases appealed from the district courts.

Published Opinions

Just as with other measures, the Northern District of Illinois' dominance in the Seventh Circuit is clear with respect to published opinions. In 359–371 F.3d, when that district accounted for over 90 percent of Illinois' Seventh Circuit cases, it constituted over half (54.2%) of the court of appeals' published opinions, a portion greater than the district's proportion of the court of appeals' caseload. Later, accounting for two-thirds of Illinois cases, the district's proportion of the court of appeals' cases overall was about two-fifths, less impressive–and less than the district's proportion of caseload–but still quite important. And for the set of cases in 451–469 F.3d, when the district accounted for 73 percent of cases from Illinois, 39 percent of all the circuit's cases (and 43.3% of those only from districts) came from that district.

In the Second Circuit, New York Southern accounted for half or more of the published opinions coming from New York State, and, with New York Eastern added, the proportion is at least three-fourths. Given those high proportions, it is not surprising that New York Southern accounted for over half of Second Circuit Court of Appeals' rulings (administrative agency cases excepted) for two sets of cases (52.9%, for 359–371 F.3d, and 52.3%, for 451–469 F.3d) and roughly two-fifths in two other later sets, and that, except for the 57 percent of cases from the districts in Volumes 415–434 F.3d, over two-thirds of published opinions come from Southern and Eastern New York together, with the proportion at 72.4 percent for the most recent case set.

Given the Ninth Circuit's large domain, one might expect that its dominant district in terms of filings, Central California, would not dominate the court of appeals' published opinions, and that, if we add those appellate rulings which derive from the neighboring Southern District of California, the proportion would increase but would not be overwhelming. Indeed, we find that cases from Central California–roughly 44 percent of all California cases–are roughly one-fifth of the court of appeals' published opinions over the four sets of those cases, with the proportion being slightly higher if BIA appeals are excluded.[10] If we combine Central California and Southern California, which provide roughly 57 percent of all published California district-based cases, those two districts are the point of origin of roughly one-fourth of the court of appeals' published opinions, ranging from a low of 23.7 percent to a

10. Thus, for the cases in 359–371 F.3d and 415–434 F.3d, 10.0 percent of published opinions are from Central California, but only 18.0 percent for 375–399 F.3d.

high of 27 percent across the period. If we exclude appeals from administrative determinations in immigration cases, the two districts' share is generally at about thirty percent.

"Unpublished" Dispositions

What happens to the dominance of districts when we look at unpublished dispositions? In the Seventh Circuit, the Northern District of Illinois has been prominent, both within the state of Illinois, at times accounting for almost three-fifths (58.5%) of unpublished dispositions from that state's districts although less at other times (e.g., 42.2% for 165–179 Fed. Appx), and in the circuit as a whole, where those cases are from roughly over one-fourth (28.6%) to almost two-fifths (38.7%) of all Seventh Circuit cases decided by memorandum disposition and over one-third of those from the districts (as high as 42.2 percent in 165–179 Fed. Appx cases). This one district thus accounts for roughly the same proportion of cases within the circuit that California's two largest districts account for in the Ninth Circuit (see below). The proportion of cases decided by unpublished disposition for which Northern District Illinois accounts is less than its proportion of published opinions at one point, so that the district plays a larger role in cases which provide circuit precedent, but the proportions are roughly equal later.

Of the Second Circuit's cases decided by unpublished disposition, the Southern District of New York accounts for slightly less than half and then half (46.4% and 50.3%, respectively) of all cases from the four New York districts, and, of those cases, the Southern and Eastern Districts combined account for upwards of three-fourths (76.6% and 83.4%, respectively). Whereas, in the first set of unpublished dispositions, Southern New York provided over one-third (35.0%) of all Second Circuit cases so decided, that is, including those from agencies, by the later period, the high increase in immigration cases meant that S.D.N.Y.'s proportion of all Second Circuit unpublished dispositions fell to one-eighth (12.9%). With agency cases excluded, however, New York Southern accounts for over two-fifths of those cases. Southern District and Eastern District unpublished dispositions combined, which first accounted for well over half (57.7%) of those rulings, were only one-fifth (21.4%) of such rulings in the later period. The two districts also accounted for two-thirds or more of those dispositions in cases from judicial districts alone.

In the Ninth Circuit, among unpublished memorandum dispositions, cases from the Central District of California accounted for less than half of those from California's four districts (48.4% in earlier period, 44.0% later), and those from the Central and Southern Districts combined accounted for

more than three-fifths of the cases from the state. Keeping in mind the heavy proportion of all cases appealed that came from agencies, we see that Central District cases accounted for only 14 percent of all cases decided by unpublished memorandum, and adding the Southern District raises the proportion only to roughly one-fifth. However, of all cases from districts within the circuit, Central California accounts for roughly one-fourth (25.9% of first set, 23.2% of second) of those cases and the two districts slightly over one-third. A comparison with the proportion of cases for which the districts account among published opinions shows that the two districts account for a slightly higher proportion of unpublished dispositions than published opinions, which perhaps indicates that those districts play a somewhat lesser role in making circuit precedent through published opinions than in overall processing of caseload.

En Bancs and Dissents from Denials

If we turn from the cases decided by three-judge panels to those decided by the court en banc, we find that for the 1972–2006 period in the Seventh Circuit, the Northern District of Illinois accounts for more than three-fourths (76.7%) of the en banc rulings the Seventh Circuit decided from Illinois, with the proportion somewhat higher in 1990–2006 (79.1%) than earlier (1972–1989: 73.7%). More important, Illinois Northern District cases account for just under half (48.5%) of all Seventh Circuit en bancs, with the proportion having been slightly over half (51.9%) from1972–1989 but dropping to 46.3 percent from 1990–2006.

In 1970–1980, the time of the Ninth Circuit's full court en banc, Central California accounted for almost half (47.5%) of all en banc rulings that came from California, roughly the same proportion as under the LEB regime from 1980–2005. Central and Southern California accounted for 72.5 percent of California's cases in the earlier period, but slightly less (67.2%) in the LEB period. Of all Ninth Circuit en banc rulings from 1970–1980, Central California was the source of one-third, and Central and Southern California were the source of just over half (51.8%). Under the LEB regime, Central California's position became less dominant, as it accounted for only one-fourth (24.1%) of all en bancs, with the two districts accounting for one-third of all en bancs.

When it comes to cases involving publishing dissents from denial of en banc hearing, we find that, while Illinois Northern accounts for almost two-thirds (65.6%) of such cases from Illinois in 1990–2006, that district accounts for only 38.9 percent of all such cases in the circuit, still a plurality but well less than the district's proportion of en banc rulings. In the Ninth Circuit,

Central California accounts for somewhat under half (45.1%) of all of the California cases, and Central and Southern California combined provided slightly more than one-half (53.5%) of these cases. Again, more important is that Central California accounted for under one-fourth (23.5%) of these cases, and the two districts only slightly more than one-fourth (27.9%).

Supreme Court Rulings

How dominant was the Northern District of Illinois in cases from the Seventh Circuit that the Supreme Court decided? This district certainly accounted for the great bulk of Illinois cases reaching and decided by the justices – over four-fifths for the 1991–2005 terms (82.4%) and almost 90 percent for the 1999–2005 terms – but what is crucial is that it accounted for three-fifths of all Seventh Circuit Supreme Court cases for the 1991–2005 terms, with for a somewhat higher proportion (62.5%) than from 1991–1998 (58.7%).

It is clear that, in cases from the federal courts in California decided by the Supreme Court, the Central District of California was the dominant source, and it was especially dominant when joined with the Southern District. Of the cases the Supreme Court took on certiorari that originated in California districts, the Central District accounted for two-fifths of those from OT 1969–OT 1988 and somewhat more than half (51.3%) from OT 1989–OT 2004; for the cases from three-judge district courts, the proportion was slightly over two-fifths (42.6%). The cases from the Central and Southern Districts combined accounted for over half of the certiorari-based cases the Supreme Court decided from California (53.6%) in OT 1969–OT 1988 and over three-fifths (61.3%) in OT 1989–OT 2004; the proportion was lower for three-judge district court cases, under half (47.1%).

Looking at all Supreme Court cases decided from the entire Ninth Circuit, we see that the Central District accounted for 23.9 percent of certiorari-based cases in the 1969–1988 Terms, not much different from the 25 percent of three-judge district court cases; however, the proportion of cert-based cases increased to 28.8 percent in the 1989–2004 Terms. (Excluding agency cases from the base on which these proportions are calculated increases these proportions only minimally.) If we add Southern District cases to those from the Central District, the proportions of the cert-based cases increase to just under one-third (31.8%) in the first period and to slightly over (34.4%) in the second.

CONCLUSION

Some are concerned that a single state–or a single judicial district–might dominate a federal judicial circuit, and this is not thought to be preferable. Given that concern, what might we learn from this preliminary explanation of the Seventh Circuit and of patterns in several other circuits where a state–and district–"bulk large" in the circuit's work?

Data have been presented on the proportion of judges attributable to Illinois, on the proportion of appeals to the Seventh Circuit coming from Illinois' judicial districts. On the "output" side, we have looked at Illinois' proportion of cases decided on the merits in published and unpublished panel dispositions, and in en banc decisions and cases in which judges dissented from denials of en banc rehearing, and its proportions of the rulings on the merits in the U.S. Supreme Court that originated in the Seventh Circuit. Throughout, comparisons have been made with the Second, Third, Fifth, Ninth, and Eleventh Circuits. In the examination of the dominance of federal districts in a circuit which followed our examination of state dominance, primary attention was given to the place of the Northern District of Illinois. Some attention was also given to the role of the districts of Southern New York and Eastern New York, in the Second Circuit, and of the Central and Southern Districts of California, in the Seventh Circuit.

State Dominance

Looking first at state dominance, perhaps the most important matter to note is that, however one measures Illinois' position or relative dominance in the Seventh Circuit, its position vis-a-vis other states in the circuit is less than that of individual states in four other circuits chosen for study because of a single state's likely dominance. Here we make the point in terms of caseload –appellate filings from various sources–because, as we shall see, other measures do not present a picture that differs in major ways. Illinois accounted for somewhat over half (55%+) of the appellate filings from district courts in the circuit, roughly the same proportion attributable to Florida in the Eleventh Circuit. However, in the Second, Third, and Fifth Circuits, the dominance of single states there is much greater, as Pennsylvania, and Texas, respectively, account for roughly three-fourths of the appellate filings in those circuits, but even that dominance is far less than New York's place in the Second Circuit, where it accounts for 90 percent of appellate filings there.

Focusing more on Illinois, we see that comparison of the proportions of each type of data attributable to Illinois reveals that the state accounted for a somewhat lesser proportion of caseload than of court of appeals judges when

all appellate findings are considered, but a greater proportion of judges for cases from the circuit's judicial districts–that is, excluding original proceedings and particularly appeals from agencies. Illinois' proportions of published opinions, unpublished dispositions, en banc rulings, and cases attracting dissents from en banc denials are roughly the same and all somewhat greater than other states within the circuit. If we turn our attention to the district court level, we find the comparison holds for by-district caseload with the exception of the Northern District. As to cases from the Seventh Circuit in the Supreme Court, the proportion of cases decided on the merits that are from Illinois is roughly the same as for the other categories examined, but the proportions of those GVR'd varies. In short, with relatively minor exceptions, and with relatively minor variations over time, Illinois' dominance does not vary, or vary much, from one measure to another, and does not vary much from the proportion of cases filed from the state's judicial districts. Does this rough identity of proportions from caseload to output occur in other circuits? We find that it does for New York in the Second Circuit, where the state has roughly the same proportion of published opinions as of appellate filings, and in the Third Circuit, where it is also true for two of the periods examined. In the Fifth Circuit, Texas's dominance among cases resulting in published opinion is less than its dominance in appellate filings in the circuit, while in the Seventh and Eleventh Circuits, Illinois and Florida, respectively, account for a higher proportion of published opinions than of appellate caseload filings.

District Dominance

In looking at the dominance of a single district instead of that of one state, we have found that, in the Seventh Circuit, the Northern District of Illinois, while accounting for almost two-thirds of the cases from Illinois, accounted for just over one-third of all cases from districts in the circuit. This finding compares roughly with the proportion of cases coming from the combined Central and Southern Districts of California in the Ninth Circuit, but exceeding that from the Central District alone. The total from the two California districts make up three-fifths of cases from the state's districts, the districts' proportion of appellate filings from the circuit's districts only grows to just over one-third (34.5%). This means that the Northern District of Illinois, as a single district, has a greater dominance in the circuit than does the Central District of California taken by itself. Moreover, in the Second Circuit, the Southern District of New York by itself accounted for two-fifths of the circuit's appellate filings from districts, and, more striking, when the Eastern District is combined with it, that proportion grows to 70 percent.

When we turn to see if there is any difference in various measures of district dominance, in the Seventh Circuit, we learn that the proportion of published opinions deriving from the Northern District of Illinois is substantially greater than the proportion of appellate cases filed from the circuit's judicial districts (91.2% and 54.2% respectively). The Northern District also accounted for a higher proportion of unpublished dispositions than published opinions, indicating a lesser role for those districts in making the law of the circuit than in overall case output. By comparison, in the Second Circuit, the proportion of published opinions deriving from the Southern District of New York, or from the Southern and Eastern Districts combined, are very similar to the proportion of published opinions derived from Illinois' Northern District. Those districts' share of the appellate filings in the circuit, and, of especial significance, those districts higher proportion of published opinions than of unpublished dispositions, further solidify their dominant place in making the law of the circuit.