Making Law in the United States Courts of Appeals

When presented with opportunities to make law, how do judges respond? In this book, Professor Klein addresses this question by examining the decisions of circuit court judges in cases not clearly covered by existing precedents. Specifically, he considers whether the actions and characteristics of their colleagues influence the choices of circuit judges to adopt particular legal rules. In addition, he asks whether and why circuit judges attempt to decide legal issues as they think the Supreme Court would in their place.

Using evidence drawn from quantitative analyses of several hundred cases, as well as interviews with two dozen circuit court judges, Klein finds that judges give serious attention to the work of colleagues, whether on their own court or other circuits. The actions, prestige, and expertise of these other circuit court judges are important factors in their decision making. However, while Supreme Court precedents factor heavily in circuit judges’ rulings, expectations as to how the Supreme Court might decide in the future appear to have little effect on their actions. These findings speak to ongoing debates about judges’ motivations and behavior, suggesting that both legal and policy goals influence judges.

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I am grateful to a number of people and institutions who helped to make this a better book than it otherwise would have been. Prominent among them are the twenty-four circuit judges whom I cannot name here but who gave generously of their time to a graduate student and project they knew nothing about. (Many more judges were gracious enough to grant my request for an interview, but I was unable to work out the logistical details with them.)

The Ohio State University provided crucial assistance in the project’s early stages through a Graduate Student Alumni Research Award. The University of Virginia helped me to complete the analysis and writing of this work through a Sesquicentennial research leave, Summer Research Grant, and Rowland Egger grant.

In the course of the work, I ran into some tricky methodological issues. Kevin Rask, Donald Richards, and Christopher Zorn kindly helped me work through them.

Darby Morrisroe provided able research assistance and collaborated in the development and validation of the measure of judicial prestige described in Chapter 4.

Eric Newman and my mother, Sheila Klein, provided valuable editorial advice. My wife, Tina Rask, helped with some of the most tedious work, including checking citations.

William Landes, Mary Mattingly, Richard Posner, Donald Songer, Isaac Unah, and Stephen Wasby each read some piece of this study in an earlier version and provided valuable suggestions.

Elliot Slotnick and Gregory Caldeira read a substantial segment of the final product in an earlier incarnation. Harold Spaeth and an anonymous reviewer offered valuable advice and suggestions.
reviewer read one or more complete drafts of the current version. All four of them provided many helpful comments and suggestions.

I owe the most to Lawrence Baum. From the beginning, he has helped with theoretical, methodological, and presentational issues, reading and responding to different pieces of the work more times than I can recall. His advice and encouragement have been invaluable.

Because convention bars me from blaming any of the aforementioned for the book’s shortcomings, I am tempted to blame my daughter Julia, whose quick fingers and curiosity about keyboards sometimes threatened disaster. But the truth is that it is easier to do good work when one’s home life is as happy as Tina and Julia have made mine. I appreciate their support, as well as that of the other members of my family whose interest and confidence have made it easier to keep going.