

THE DISTRICT OF OREGON IN THE U.S. SUPREME COURT¹

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INTRODUCTION

What roles do district courts play in the federal judicial system? They are the point of entrance for most cases, except agency appeals that go directly to the courts of appeals. Most court of appeals cases, and thus most Supreme Court cases, originate there, and for many years, cases regularly went to the Supreme Court directly from three-judge district courts.² District courts produce the final decisions in cases that are not appealed and take actions concluding cases remanded to them. District courts are also agents serving the appellate courts, both the district courts' immediate principals, the courts of appeals, and the ultimate principal, the Supreme Court. How district court rulings fare on appeal is an indication of how those courts have performed as agents, with appellate reversals being one mechanism by which the principals signal the agent to stay in line, while affirmances serve as reinforcement for lower court rulings the principal favors.

Basic factual determinations are made in the district courts, which also provide the initial rulings on points of law that will be reviewed on appeal. Certainly the record created and the opinions written in the district courts, including findings of fact and conclusions of law, provide the grist for the appellate courts, although those courts may rewrite or alter the emphasis placed on those findings and conclusions. Thus the district court's rulings provide the potential basis for what appellate courts say in ruling on appeals from the district court.

In a study of cases from the Third, Fifth, and Eighth Circuits from 1956-1961, Richardson and Vines recognized that the Supreme Court justices may use (or not use) lower court rulings in a number of ways.³ One way was to "ignore lower court deliberations altogether, citing no data from the trial record and not discussing the merits of the opinions delivered in the courts below," true of almost half of the cases in their small sample.⁴ More moderate reliance in which the appellate courts "depend partially on lower court actions, citing the trial record, and referring briefly to the decisions" took place in less than one-sixth of their cases.⁵ And extensive reliance, in which they "rely heavily on lower court deliberations, citing lower court opinions at length, commenting on their merit, and depending on their opinions in deciding the case," occurred in somewhat over one-third of the cases.⁶ In almost half of the latter instances, constituting roughly one-sixth of the total set of cases, "the function of the lower court citation was only to justify a dissenting opinion," with the court of appeals' opinion "cited as the correct view of the case and objection . . . made to overruling that opinion."⁷

Particularly by comparison to attention they have devoted to the U.S. Supreme Court,

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2. Three-judge district courts are now used only in voting rights cases, primarily redistricting cases. In rare instances specified by Congress, cases go directly from single-judge district courts to the Supreme Court.

3. RICHARD J. RICHARDSON & KENNETH N. VINES, *THE POLITICS OF FEDERAL COURTS: LOWER COURTS IN THE UNITED STATES* 156 (1970).

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* at 157.

researchers have paid little heed to the district courts, at least beyond the subject of judicial selection.⁸ What happens to district court rulings is among the topics on which there is scant information. To help remedy this deficiency, a study was undertaken of how rulings of one district court fare in the Supreme Court. This study of the federal judicial system “from the bottom up” provides greater focus on the district court’s importance than does the more typical “top down” approach to Supreme Court decisions, which emphasizes the constraints those decisions create for lower courts.

This Article reports how decisions of the U.S. District Court for the District of Oregon fared in the Supreme Court once the U.S. Court of Appeals for the Ninth Circuit dealt with the district court’s rulings. The time examined is the thirty-year period from the 1969 through 1998 Terms of the Supreme Court, with an Epilogue on the 2000 Term. Among the questions addressed are the following: If the court of appeals affirmed the district court, how did the Supreme Court treat those rulings? Were they reversed in turn? When the district court’s position was reversed or vacated by the court of appeals, did the Supreme Court restore and ultimately vindicate the district court by, in turn, reversing the court of appeals judgment? The goal is to see whether the Supreme Court’s ultimate result served to uphold the district court’s disposition or to overturn it, or, better stated, whether the justices’ ruling was *consonant with* or *at variance with* the district court’s action.

The cases treated in this Article are those very few that survived an extended gauntlet to reach the Supreme Court and receive something more than denial of review. These cases may not be fully representative of a district court’s work, as areas of law of particular significance to that court are likely to be over-represented among those that reach the justices. What is provided here is only part of a complete picture of a federal district court’s activity, which includes many cases not taken to the court of appeals and, of those which are appealed, those in which certiorari is not sought.

By taking the Ninth Circuit’s disposition of District of Oregon cases into account, the Article also provides a look at how a district court fares at the hands of its immediate principal, as well as a more complete picture of a court of appeals’ use of, and reliance upon, district court rulings. In the period studied, the Supreme Court heard many cases from the Ninth Circuit and in several terms reversed an extremely high proportion of the Ninth Circuit’s rulings. For that reason, although we do not have direct evidence on the matter, this study may cast light on recent findings that “as the Supreme Court increases its scrutiny of a circuit,” the circuit will review district court rulings because of the possibility that the district court, “sensitive to their principal’s principal at the Supreme Court,” will have “recognized the [Supreme] Court’s dissatisfaction with the circuit” and “may not be convinced of the finality or authority underlying circuit precedent.”⁹

This Article encompasses all District of Oregon cases that the Supreme Court decided on the merits. Cases are grouped by their respective treatments in the Ninth Circuit and the Supreme Court. Within those groupings, they are treated by subject matter, rather than chronologically.¹⁰ Considered separately are cases in which the justices granted certiorari, vacated, and remanded (GVR) for reconsideration in light of an earlier ruling. Because district judges also contribute to the development of cases that reach the Supreme Court by

8. *But see* ROBERT A. CARP & C.K. ROWLAND, *POLICYMAKING AND POLITICS IN THE FEDERAL DISTRICT COURTS* (1983); C.K. ROWLAND & ROBERT A. CARP, *POLITICS AND JUDGMENT IN FEDERAL DISTRICT COURTS* (1996). On judicial selection, see SHELDON GOLDMAN, *PICKING FEDERAL JUDGES: LOWER COURT SELECTION FROM ROOSEVELT THROUGH REAGAN* (1997).

9. Susan Haire, Stefanie Lindquist, & Donald Songer, *Appellate Court Supervision in the Federal Judiciary: A Hierarchical Perspective*, 37 *LAW & SOC’Y REV.* 143, 162 (2003).

10. What took place on remand is for the most part beyond the scope of this Article.

sitting with the court of appeals, initially to become socialized and then later to provide necessary judicial manpower,¹¹ I include a brief examination of Supreme Court cases in which a District of Oregon judge sat on a Ninth Circuit panel, particularly by writing the opinion there.¹² And because when three-judge district courts were common, a judge from one district might sit on such a court in another district, cases the Supreme Court reviewed when a District of Oregon judge had participated in a three-judge district court in another district are also discussed.

After these introductory remarks, the Article continues with a look in Part II at “the overall picture” provided by basic information on the frequency with which the District of Oregon was upheld or reversed in the Ninth Circuit and the Supreme Court. The core of the Article follows in Part III. Presented is the examination in turn of cases in which the Ninth Circuit and Supreme Court affirm the district court (Part III.A); the district court is reversed by the Ninth Circuit, which is reversed in turn (Part III.B); the Ninth Circuit affirms the district court and is then reversed (Part III.C); and the Ninth Circuit reverses the district court and the Supreme Court then affirms the court of appeals (Part III.D). A brief treatment of a Supreme Court stay of a district court ruling (Part III.E) is followed by examination of the Supreme Court’s GVR dispositions of Ninth Circuit decisions from the District of Oregon (Part III.F). Reporting of the study’s findings ends with Supreme Court treatment of three-judge district court rulings from the District of Oregon (Part IV) and discussion of District of Oregon judges’ participation in Ninth Circuit rulings that went to the Supreme Court (Part V). After some concluding thoughts (Part VI), rulings from the 2000 Term are presented in an Epilogue.

11. See Stephen L. Wasby, “Extra” Judges in a Federal Appellate Court: *The Ninth Circuit*, 15 LAW & SOC’Y REV. 369 (1980-1981).

12. Under circuit practice, a judge from one district does not sit with the court of appeals to review any cases from the judge’s own district.