

BRENNAN

CENTER

FOR JUSTICE

ANALYSIS

The Impact of Judicial Vacancies on Federal Trial Courts

Alicia Bannon

ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. We work to hold our political institutions and laws accountable to the twin American ideals of democracy and equal justice for all. The Center's work ranges from voting rights to campaign finance reform, from racial justice in criminal law to Constitutional protection in the fight against terrorism. A singular institution — part think tank, part public interest law firm, part advocacy group, part communications hub — the Brennan Center seeks meaningful, measurable change in the systems by which our nation is governed.

ABOUT THE BRENNAN CENTER'S PUBLICATIONS

Red cover | Research reports offer in-depth empirical findings.

Blue cover | Policy proposals offer innovative, concrete reform solutions.

White cover | White papers offer a compelling analysis of a pressing legal or policy issue.

ACKNOWLEDGEMENTS

The Brennan Center gratefully acknowledges the Democracy Alliance Partners, The Joyce Foundation, The JPB Foundation, John D. and Catherine T. MacArthur Foundation, Mertz Gilmore Foundation, and Open Society Foundations for their generous support of this work.

Many Brennan Center staff members contributed to this publication. The author would like to thank Wendy Weiser for her advice and editorial assistance throughout the drafting process and Oliver Roeder and Sabeel Rahman for their assistance with data analysis. The author would also like to thank Brennan Center clinic students Wayne Smart and Chris Leuchten for their extensive research in support of this publication, including conducting interviews with court administrators and federal court practitioners. Allyse Falce, Katherine Munyan, and Cody Cutting also provided excellent research assistance, and Michael Waldman, John Kowal, Jim Lyons, Seth Hoy, Kate Berry, and Matthew Menendez provided invaluable insights and editorial assistance. The author is also grateful to legal interns Rebecca Morse and Kwame Akosah for their proof-reading and cite-checking.

Finally, the author is grateful to the many judges, court administrators, and practitioners who participated in interviews with the Brennan Center.

ABOUT THE AUTHOR

Alicia Bannon serves as counsel for the Brennan Center's Democracy Program, where her work focuses on judicial selection and promoting fair and impartial courts. Ms. Bannon also previously served as a Liman Fellow and Counsel in the Brennan Center's Justice Program, where she co-authored a report on the harmful effects of fees imposed by the criminal justice system. Prior to joining the Brennan Center, Ms. Bannon was a John J. Gibbons Fellow in Public Interest and Constitutional Law at Gibbons P.C. in Newark, N.J., where she engaged in a wide range of public interest litigation within New Jersey and nationally.

Ms. Bannon received her J.D. from Yale Law School in 2007, where she was a Comments Editor of the Yale Law Journal and a Student Director of the Lowenstein International Human Rights Clinic. She subsequently clerked for the Honorable Kimba M. Wood in the Southern District of New York and the Honorable Sonia Sotomayor in the Court of Appeals for the Second Circuit. She graduated from Harvard College *summa cum laude* in 2001 with a degree in Social Studies. Prior to law school she worked in Kenya and Uganda managing evaluations of development projects, as well as at the Center for Global Development in Washington, D.C.

TABLE OF CONTENTS

I. Introduction	1
II. Research Scope and Methodology	3
III. Impact of Vacancies	4
A. Justice Delayed	4
B. Individual Cases Suffer	8
C. Impacts on Court Administration	8
D. Risk of Judicial Burn-Out	9
IV. Variations in Capacity to Compensate for Vacancies	11
A. Level of Senior Judge Assistance	11
B. District Workload	12
C. Vacancies as a Proportion of Total Judgeships	14
D. Geographic Size	14
E. Use of Magistrate Judges and Other Administrative Variations	15
V. Conclusion	16
Endnotes	17

I. INTRODUCTION

Since 2009, the federal trial courts have experienced unusually high and sustained levels of judicial vacancies.¹ Following years of obstruction, the pace of Senate confirmation of judicial nominees has dramatically accelerated since April 2014.² Yet half of all district court vacancies lack nominees (25 out of 50, as of July 14, 2014),³ meaning that more than two dozen vacancies are likely to remain unfilled in the foreseeable future. (Under current practice, nominees are put forward by the White House following consultation with home state senators, who have the power to keep nominees from moving forward in the Senate.) In addition, nine new district court vacancies are expected to open by the end of the year.⁴ From habeas petitions waiting years to be heard, to complex patent disputes unable to find a trial date, vacancies affect individuals and businesses that rely on the courts to resolve their disputes and protect their rights.

In an earlier report, the Brennan Center analyzed national court data on vacancies and caseload in order to document the burden that judicial vacancies create.⁵ In this study we dig deeper, analyzing the experiences of 10 districts that currently have judicial vacancies or that recently had vacancies filled. An analysis of court data, coupled with interviews with more than 20 chief judges, court administrators, and practitioners, suggests that vacancies impact the ability of many courts to effectively and timely administer justice. In eight of the 10 profiled districts, judges and court administrators reported that judicial vacancies had a substantial impact on their courts.

- **Case delays:** Delay in resolving motions and hearing trials was the most common impact cited in interviews with judges and court administrators, with eight districts reporting delays caused by vacancies. Our analysis of court data found that having a single judicial vacancy for 12 months was associated, at a statistically significant level, with a 2 percentage point increase in the percentage of cases pending for three years or more.
- **Less time spent on individual cases:** Judges in four districts observed that heavier case-loads due to vacancies meant they spent less time considering individual cases, raising troubling concerns about the quality of justice dispensed.
- **Administrative burdens:** Vacancies mean more than the loss of a judge. Judges and court administrators in five districts emphasized the “trickle-down” effect on judicial administration, including the loss of law clerks and other administrative resources and reduced capacity for the work of judicial committees.
- **Risk of judicial burn-out:** Vacancies mean more work for a district’s remaining judges. In eight districts, chief judges and court administrators raised concerns about judges taking on heavy workloads in an effort to compensate for vacancies, with four specifically citing judicial burn-out as a cause for concern.

At the same time, the experiences of the 10 profiled districts suggest that some districts have a greater ability to compensate for unfilled seats than do others, with the amount of assistance from “senior judges” (judges who are retired from active service but continue to hear cases on a voluntary basis) playing a particularly important role.

This study suggests that unfilled seats leave many federal trial courts unable to effectively manage their dockets — with the individuals and businesses that rely on these courts paying the price. The White House and Senate should prioritize identifying nominees for unfilled judgeships and continue their recent progress in confirming qualified nominees.

II. RESEARCH SCOPE AND METHODOLOGY

This study considers the impact of judicial vacancies on the federal trial courts through an analysis of 10 judicial districts that currently have or have recently experienced vacancies. The profiled districts are the District of Arizona, Eastern District of California, Northern District of California, Middle District of Florida, Southern District of Florida, Eastern District of Michigan, District of Nevada, Western District of New York, Eastern District of Texas, and Western District of Wisconsin.

The profiled districts cover six of the country's 12 geographic circuits, varying in size from two judgeships in the Western District of Wisconsin to 18 judgeships in the Southern District of Florida. At the time interviews were conducted, all of the selected districts had at least one vacancy, and all but two had at least a 15 percent vacancy rate as a percentage of total judgeships. As of July 14, 2014, three of the districts continued to have judicial vacancies (E.D. Cal., S.D. Fla., E.D. Tex.). In addition, in three of the profiled districts, judges have informed the Administrative Office of the United States Courts of their intention to retire, meaning that new vacancies are expected to open in these districts (N.D. Cal., W.D.N.Y., E.D. Tex.). The Chief Judge of the Middle District of Florida likewise noted during an interview that she was anticipating at least two new vacancies in her district to open in 2015 due to judges taking senior status.⁶

While not a random sample, the 10 profiled districts were selected to reflect diverse sizes, caseloads, and geographic regions.⁷ This study is based on interviews with chief judges, court administrators, and practitioners regarding how their districts have been affected by vacant judgeships, as supplemented by an analysis of court data from the Administrative Office of the U.S. Courts. Each profiled district included an interview with at least one judge or court administrator, and the principal findings are based on self-reporting by interviewees. Interviews were conducted between September 2013 and May 2014.

III. IMPACT OF VACANCIES

A. Justice Delayed

The most common observation in the surveyed districts was that vacancies slowed down the ability of courts to resolve motions and try cases. Interviewees highlighted how delays can raise the cost of litigation, cause evidence to go stale, make it harder to settle civil cases, and even put pressure on criminal defendants to plead guilty.

In eight out of the 10 districts profiled, judges or court administrators observed that the vacancies had caused delays due to heavier caseloads (D. Ariz., E.D. Cal., N.D. Cal., M.D. Fla., D. Nev., W.D.N.Y., E.D. Tex., W.D. Wis.).⁸ As Chief Judge Anne Conway of the Middle District of Florida observed, “Things take longer because of vacancies. . . . When you have as many cases as we have, it’s just hard.”⁹

An analysis of national court data similarly suggests that districts with vacancies are seeing greater delays. In 2012, districts with no vacancies had an average of 9 percent of civil cases that were three or more years old, while in districts with at least one vacancy the percentage was 13 percent.¹⁰ Controlling for a district’s workload, having a single vacancy for 12 months was associated, at a statistically significant level, with a 2 percentage point increase in the percentage of cases pending for 3 years or more.¹¹

By the Numbers: The Eastern District of California

One district that has been particularly hard-hit by vacancies is the Eastern District of California. Since July 2012, between one and two of the district’s six seats have been vacant, with one seat currently unfilled. From July 2012 through December 2013, the median time from filing to trial for civil cases in the district increased by more than five months, while the percentage of civil cases pending for more than three years rose from 11.6 percent to 13.5 percent. These signs of delay occurred at the same time the number of filings weighted for case complexity in the district fell, strongly suggesting that the vacancies contributed to the delay.¹² With the third-highest number of filings per authorized judgeship in the country in 2013, judges in the Eastern District of California face an overwhelming caseload even with a fully staffed court.¹³ The current situation is “not sustainable,” observed the district’s Chief Judge.¹⁴

In the profiled districts, delays were frequently described as most pronounced in civil cases, because speedy trial obligations necessitate prioritizing criminal cases.¹⁵ Several judges and court administrators suggested that complex civil cases were frequently hardest hit by judicial shortages, because they often require close review of a lengthy record or the scheduling of a multi-week trial.¹⁶

Chief Judge Claudia Wilken of the Northern District of California, whose district has a high concentration of patent cases, explained why she thought vacancies were more likely to impact complex cases, noting that “bigger cases make more work, difficult motions, and lengthy trials that can be difficult to schedule.”¹⁷ Likewise, Chief Judge Raner Collins of the District of Arizona explained that the “huge records” that characterize many habeas petitions mean that they are often subject to delay when seats go unfilled. He explained, “If you only have an hour or two, you’re not going to get through it. You’re going to have to repeat work the next time. You need a long uninterrupted stretch, which you don’t get when you’re operating under the gun.”¹⁸ Chief Judge William Skretny of the Western District of New York also identified habeas petitions as particularly affected by vacancies. He explained that “it takes a very special effort to read through the papers and put them into the kind of shape that enables final disposition” since the petitioners are often self-represented. “I don’t think the cases are neglected, but they are certainly affected,” he added.¹⁹

However, while vacancies typically impact civil cases most severely, in one of the profiled jurisdictions, the Eastern District of Texas, a heavy criminal docket coupled with a long-standing vacancy in the Sherman Division has created substantial delays in criminal trials and sentencings as well.²⁰ Two criminal practitioners in Sherman observed that delays caused by the division’s vacancy were putting additional pressure on their clients to forego trials altogether and plead guilty to avoid continued uncertainty and lengthy pre-trial detentions. “You can’t underestimate the quieting effect it has on defendants’ willingness to assert their right to a trial,” said one attorney.²¹ **[See Spotlight on Sherman, Texas for more information.]** Nationally, analysis of court data suggests that vacancies have a small but statistically significant effect on the progress of criminal cases; controlling for caseload, 12 months of a vacancy in a district is associated with almost an extra month in the median time for the disposition of felony cases.²²

With respect to the mechanism by which vacancies slow down cases, difficulty scheduling trials was the most common source of delay attributed to vacancies, cited in seven of the 10 profiled districts (D. Ariz., E.D. Cal., N.D. Cal., M.D. Fla., W.D.N.Y., E.D. Tex., W.D. Wis.).²³ As Chief Judge Skretny of the Western District of New York observed, “We don’t neglect the seventh amendment, the right to a civil trial. But we tell people, if this is what you want to do, it will take time to get there.”²⁴ Chief Judge Collins of the District of Arizona, which recently had six vacancies filled, highlighted how vacancies left his court with fewer judges to assist with taking cases when multiple trials were ready to begin at the same time.²⁵ These lengthy waits for trial can prejudice outcomes and harm the individuals and businesses that rely on courts to resolve their disputes. As Chief Judge Morrison England from the Eastern District of California emphasized, “People lose their memory of what occurred, evidence spoils, people die. It’s not a good thing.”²⁶

“We don’t neglect the seventh amendment, the right to a civil trial. But we tell people, if this is what you want to do, it will take time to get there.”

— CHIEF JUDGE SKRETNY, WESTERN DISTRICT OF NEW YORK
(describing impact of vacancies on his district)

Judges in three of the profiled districts also described how vacancies led to delays in resolving motions, which in turn slowed down a case's path to trial or settlement (E.D. Cal., N.D. Cal., M.D. Fla.).²⁷ Chief Judge Conway explained how vacancies in the Middle District of Florida led to delays in resolving dispositive motions, creating additional expenses for the parties appearing before the court. "Vacancies push cases back . . . If you could rule on a summary judgment motion right away it would save the parties a lot of time [and] narrow the issues," she explained. "Reducing the number of open questions also narrows a case's discovery. Fewer issues mean that the client pays less."²⁸

Judges and court administrators in three districts likewise observed that delays in resolving motions and setting firm trial dates had made it harder to settle civil cases, leaving disputes unresolved for longer periods and perpetuating uncertainty for litigants (E.D. Cal., M.D. Fla., W.D. Wis.).²⁹ However, a judge in one district believed that long waits for trial dates were actually encouraging settlement,³⁰ while an Arizona attorney suggested that delays were shifting the balance of power in settlement dynamics toward defendants.³¹ These different perspectives reflect the complex considerations that go into settlement decisions and suggest that the impact of vacancies on settlement dynamics is a ripe area for further inquiry.

Spotlight on Sherman, Texas

Judicial vacancies can pose significant challenges for geographically dispersed districts, where judges and other court resources cannot be easily redistributed when judgeships go unfilled. One such example is in the Eastern District of Texas, a district more than four times the size of Massachusetts that is broken into six divisions. The district currently has two vacancies, including one in the Sherman Division, which serves close to 2 million residents.

The Sherman Division currently has only one resident judge who hears cases. To compensate for the vacancy, two judges from other divisions in the district regularly travel 350 miles to hear cases in Sherman, typically spending several days per month traveling.³² Sherman's only resident judge has announced his intention to take senior status in March 2015, which will create a second vacancy in the division.

Over half of the criminal prosecutions in the Eastern District of Texas are located in Sherman,³³ and the division's vacancy has had a particularly significant impact on criminal cases. "It's taking a lot longer for criminal defendants to get to trial, and then to get sentenced,"³⁴ observed the district's Clerk of Court, David Maland. In 2013, the median time from filing to disposition for felony cases in the Eastern District of Texas was 12 months, up from 9.9 months in 2009 when the district had no vacancies, and substantially higher than the national average of 7.3 months.³⁵ According to a defense lawyer who

practices in Sherman, “It’s common to wait a year, a year-and-a-half for sentencings, only to have the case transferred to another judge at the last minute.”³⁶

Criminal defense lawyers practicing in Sherman expressed concern that the delays caused by vacancies were compromising the rights of their clients. One lawyer noted that for the first time in his experience, he has a client sitting in jail awaiting trial who will see co-defendants who pleaded guilty finish their prison terms before her case is even heard. “They [the prosecutors] tell you your client will be in jail because [her co-defendants] took a plea and she wants a trial,” he said. “It’s a hammer over her head — plead guilty and you’ll be out of jail.”³⁷ He explained the dilemma his clients face: “It undermines your ability to truly go to trial and defend yourself because you think you’re innocent. The delay is so much, it’s easier to take the plea.” He added, “When I started doing this work 15 years ago, or even six or seven years ago, our big fear was that a judge would tell you to be ready for trial in 90 days. [The vacancy has] led to such a huge difference in how the prosecution looks at the cases. There’s no other explanation for the change other than the vacancies and the number of criminal cases filed in the district.”³⁸

The Eastern District of Texas’s Chief Judge, Leonard Davis, also highlighted the impact of the Sherman vacancy on the timing of sentencing. “It’s a hardship for the litigants,” he explained. “Due to the backlog and [the] vacancy [in Sherman], we have a very high population of criminal defendants, about 200, sitting in county jails, having pled guilty and waiting for sentences. They can’t get their cases processed.”³⁹ He noted that inmates are typically housed in a county jail because there are no federal facilities available, which is more costly for the government and leaves inmates with fewer work and educational opportunities. “That’s not fair to [the inmates] and adds a great deal of unnecessary cost by having to house them for so long in county jail holding facilities,” he said.⁴⁰

Sherman’s vacancy has also burdened civil cases. A civil practitioner described challenges in moving a complex case against a large financial institution to trial in Sherman. “I have to worry that if the judge doesn’t hear the case during a December pre-trial date, the judge won’t take another civil sitting until May 2015.” He explained that if any issues come up in discovery that require extra time and they “miss the [December] slot, there’s no forgiveness for half a year.”⁴¹

Local bar associations and business leaders in Sherman have sounded the alarm, urging that the court’s vacancy be filled.⁴² After more than two years, a nominee was named in late June, raising hopes that there may finally be progress in filling Sherman’s vacant seat. Local attorney and former president of the Grayson County Bar Association Roger Sanders observed, “It’s incredible to think that with a division approaching 2 million people, with massively growing cities — how can you have almost 2 million people with only one judge, who’s about to take senior status?”⁴³

B. Individual Cases Suffer

Overloaded dockets due to vacancies do more than slow down cases. In four of the 10 districts surveyed, judges also expressed concern that vacancies caused them to spend less time on individual cases (D. Ariz., M.D. Fla., W.D.N.Y., E.D. Tex.).⁴⁴ These concerns are consistent with scholarship that suggests that when judges are overworked, the quality of justice suffers as judges use shortcuts that can lead to everything from harsher criminal sentences to more deferential review of lower court decisions by appellate courts.⁴⁵

Chief Judge Davis in the Eastern District of Texas described the situation in his district as “simple math.” With more cases “you have less time to give to [an individual] case,” he explained. “It affects the quality of justice that’s being dispensed and the quantity of work you can complete,” he added.⁴⁶ An attorney who practices regularly before the Eastern District of California echoed these concerns from a practitioner’s perspective. The judges “decide things without hearings, even big dispositive motions like summary judgment,” he observed. “I tend to think it results in less time to actually reflect on what’s being submitted. They might call it ‘efficiency,’ but one might also call it ‘rushed rulings,’” he added.⁴⁷

Chief Judge Conway in the Middle District of Florida concurred that vacancies and heavy caseloads had impacted the practice of judging, although she emphasized that she did not believe it was changing ultimate outcomes. “Sometimes you’d like to be able to spend more time thinking and writing, or having more hearings,” she noted. “We just don’t have time to do that — there are fewer hearings and less face time with attorneys [because of vacancies]. I don’t think the final product is any different, but . . . [w]e would like to be able to benefit from hearing more from the lawyers.”⁴⁸ “You really want a clear mind for the kind of cases we have,” she continued.⁴⁹

“Sometimes you’d like to be able to spend more time thinking and writing, or having more hearings. We just don’t have time to do that.”

— CHIEF JUDGE CONWAY, MIDDLE DISTRICT OF FLORIDA

C. Impacts on Court Administration

Judges and court administrators in five districts also raised concerns about the broader impact that vacancies placed on court administration (E.D. Cal., N.D. Cal., M.D. Fla., E.D. Tex., W.D. Wis.).⁵⁰ “It’s a trickle-down effect. When you have a vacancy it affects all parts of your court system,” observed the Eastern District of Texas’s Chief Judge Davis.⁵¹

Vacancies can impact districts’ judicial resources and staffing, particularly if a judgeship stays vacant for a lengthy period. When a judgeship becomes vacant, the remaining judges in the district typically take on greater workloads to compensate for the vacancy. However, if a judge leaves the bench through retirement or death, the district loses any law clerks, courtroom deputies, or administrative assistants

that had been allocated to the judge after 120 days (with the possibility of an extension of up to 210 days).⁵² Without these law clerks and chambers personnel, the remaining judges lose research and administrative support for the cases added to their dockets. “Those law clerks do a lot of legwork,” noted Chief Judge Davis, whose district’s two vacancies were the result of retirements. “We’re not only down two judges [in my district], we’re also down six law clerks or their equivalent.”⁵³

Similarly, a judge that retires from active service and takes senior status is allocated staff based on the senior judge’s actual workload.⁵⁴ Since many senior judges carry reduced loads, staffing for the district is reduced even though the overall workload for the district is unchanged. The Clerk of Court in the Western District of Wisconsin, which recently experienced two vacancies in a two-judge court, describes this as a “multiplier effect.” “The loss of the judge is only part of the problem,” he explained.⁵⁵

Vacancies likewise impact other aspects of judicial administration. Chief Judge Claudia Wilken from the Northern District of California observed that vacancies reduce the capacity of judges to work on committees that address important administrative issues, such as changes to local procedural rules and initiatives to effectively utilize technology. “With more judges, we could be more proactive and study the issues more,” she noted.⁵⁶

D. Risk of Judicial Burn-Out

Beyond the direct impact of vacancies on litigants and courts, judges and court administrators in eight of the 10 districts also identified overworked judges as another consequence of vacancies (D. Ariz., E.D. Cal., N.D. Cal., M.D. Fla., S.D. Fla., D. Nev., W.D.N.Y., W.D. Wis.).⁵⁷ As Chief Judge Wilken in the Northern District of California, which at the time of the interview had three vacancies, noted, “I’d like to emphasize just how hard the judges are working . . . [including] evenings, weekends, work at home.”⁵⁸

These heavy workloads can take a toll on judges; in four districts, interviewees explicitly raised the concern of burn-out due to the burdens of compensating for long-term vacancies (E.D. Cal., S.D. Fla., D. Nev., E.D. Tex.).⁵⁹ Chief Judge Davis in the Eastern District of Texas, for example, described the “long-term tolling effect on the judges” from his district’s two vacancies, citing an impact on “morale.”⁶⁰ He added, “I sense a weariness and a tiredness on behalf of our district judges, especially ones that have to travel long distances [because of vacancies].”⁶¹ Judge Davis speculated that this long-term toll was encouraging judges in his district to retire, noting that the number of senior judges in his district has declined as more judges chose to leave the bench altogether when they reached retirement age.⁶² Chief Judge Federico Moreno in the Southern District of Florida likewise highlighted the toll that vacancies in his district placed on judges, despite observing that he did not think the vacancies were impacting the administration of justice.⁶³ “It’s like an emergency room in a hospital,” he observed. “The judges are used to it and people come in and out and get good treatment. But the question is, can you sustain it? Eventually you burn out.”⁶⁴

In two districts, interviewees also highlighted the burdens on senior judges who had retired from active service while continuing to carry full or close-to-full caseloads,⁶⁵ arguing that it “wears [them] down.”⁶⁶ The Clerk of Court in the Western District of Wisconsin commended the district’s senior judge as “working as hard or harder than before she retired.”⁶⁷

“It’s like an emergency room in a hospital. The judges are used to it and people come in and out and get good treatment. But the question is, can you sustain it? Eventually you burn out.”

— CHIEF JUDGE FEDERICO MORENO, S.D.FLA.

Several attorneys raised similar concerns, describing “wear and tear” on their districts’ judges,⁶⁸ along with “overwork,”⁶⁹ a “lower level of morale,”⁷⁰ and a “very heavy burden”⁷¹ on judges. These observations suggest that high and sustained levels of judicial vacancies raise concerns not just for their impact on current cases but for the long-term health and vitality of our courts.

IV. VARIATIONS IN CAPACITY TO COMPENSATE FOR VACANCIES

While most of the profiled districts described substantial impacts from vacancies, districts varied in their capacity to compensate for empty seats. In four districts, for example, chief judges reported that heavy caseloads and limited senior judge assistance exacerbated the burden from judicial vacancies in their districts (D. Ariz., E.D. Cal., M.D. Fla., E.D. Tex.).⁷² In contrast, chief judges in two districts stated that they had not observed a major impact from vacancies, emphasizing the assistance they had received from multiple senior judges (E.D. Mich., S.D. Fla.).⁷³

Although further study is needed, the experiences in the profiled districts suggest several factors relevant to understanding how damaging a vacancy is likely to be to the administration of justice in a given district. These factors include: the amount of assistance a district receives from senior judges; the district's overall workload; the number of unfilled seats in a district as a proportion of total judgeships; the district's geographic size; and the administrative responses undertaken by the district to compensate for vacancies, including the use of magistrate judges. While the impact of vacancies on individual districts is complex and multifaceted, these factors suggest some of the ways that districts may vary in their capacity to compensate for unfilled seats.

A. Level of Senior Judge Assistance

Interviews in the profiled districts suggest that one of the most significant factors in how well a court can compensate for vacancies is the extent of assistance from senior judges. In nine of the 10 profiled districts, judges or court administrators identified their district's level of senior judge assistance as vital to whether and how they were able to compensate for vacancies (D. Ariz., E.D. Cal., M.D. Fla., S.D. Fla., E.D. Mich., D. Nev., W.D.N.Y., E.D. Tex., W.D. Wis.).⁷⁴

Under federal law, eligible judges can retire from the bench at full salary or choose to take "senior" status, where they are retired from active service but continue to serve and hear cases, often on a part-time basis.⁷⁵ Nationally, senior judges carry an average of 50-60 percent of an active judge's caseload; however, senior judge caseloads vary substantially, as do the number of senior judges in each district.⁷⁶ When vacancies are filled in a timely manner, senior judges provide supplemental support that increases a court's capacity. However, when vacancies linger, senior judges in some districts have played a central role in helping offset the impact of empty seats.

Among the profiled districts, three districts reported that senior judges had volunteered to take full or close-to-full loads to help compensate for vacancies (E.D. Cal., W.D.N.Y., W.D. Wis.).⁷⁷ For example, a court administrator in the Western District of Wisconsin described his district as being kept from "an untenable situation" because a senior judge had "volunteer[ed] to be a full-time judge."⁷⁸

Senior judge assistance was likewise described as vital in the two districts whose chief judges had not observed a major impact from vacancies. In the Eastern District of Michigan, which has 15 judgeships, the Chief Judge explained that four vacancies (which have since been filled) were counterbalanced

by the service of 11 senior judges, nine of whom were carrying a full docket. The district's Chief Judge noted, "Senior judges have really helped us. We would have much greater need if we didn't have such active participation by our senior judges."⁷⁹ Likewise, the Chief Judge for the Southern District of Florida, which had three vacancies for 18 judgeships at the time of the interview and currently has two vacancies, described his district as still productive, emphasizing the assistance of his district's nine senior judges, which he described as a "godsend" and "making a big difference."⁸⁰

In contrast, four districts reported that one of the reasons they were having difficulty compensating for vacancies was because they had only limited senior judge assistance due to retirements or senior judges carrying small caseloads (D. Ariz., E.D. Cal., M.D. Fla., E.D. Tex.).⁸¹ For example, since 2007, three judges in the Eastern District of California have left the bench altogether, leaving the district with four (rather than seven) senior judges.⁸² Of the current trial court vacancies, roughly three quarters stem from judges' taking senior status, while the remainder are due to retirement, death, or the elevation of a judge to a circuit court.⁸³

Significantly, court data generally describes districts' workloads by reference to the number of judgeships authorized by Congress — a figure that excludes senior judge assistance — and does not make statistics on senior judge assistance in individual districts readily available. The Administrative Office of the U.S. Courts could facilitate a better understanding of the role that senior judges play in districts with vacancies by making data on senior judge assistance accessible as part of their case management statistics.

B. District Workload

In seven of the 10 profiled districts, judges or court administrators described above-average caseloads as exacerbating the burden from vacancies, with vacancies pushing already overwhelmed courts past their limits (D. Ariz., E.D. Cal., N.D. Cal., M.D. Fla., W.D.N.Y., E.D. Tex., W.D. Wis.).⁸⁴ District court judges carry widely varying caseloads even when all seats are filled. In 2013, for example, the Eastern District of Texas had almost six times as many filings per judgeship, as weighted for case complexity, as did the district court for the District of Columbia (not counting senior judge assistance).⁸⁵

Although not universal, interviewees in many high-caseload districts complained that the district's judges were severely burdened by having to take on additional cases when seats were left unfilled, describing judges as "treading water"⁸⁶ and being "very overworked,"⁸⁷ with one observing that "the sheer burden of our caseload numbers means that delay is inevitable when there are vacancies."⁸⁸ In all, nine of the 10 profiled districts have been identified by the Judicial Conference of the United States, the principal policy-making body for the federal courts, as having sufficiently heavy caseloads to justify new judgeships,⁸⁹ while Congress's failure to create new judgeships was itself a wide source of complaint among districts profiled for this report.⁹⁰ **[See Beyond Vacancies: The Need for New Judgeships for more information.]** The Southern District of Florida was the only high-caseload district whose chief judge did not view vacancies as posing a severe burden, citing both the productivity of the active judges in his district along with the assistance of the district's nine senior judges.⁹¹

These observations suggest that a district's overall workload is another factor that should be considered in evaluating the likely impact of a vacancy. This finding is consistent with the practice of the Administrative Office of the U.S. Courts, which categorizes vacancies in districts with high caseloads as "judicial emergencies."⁹²

C. Vacancies as a Proportion of Total Judgeships

Federal trial courts also vary widely in the number of judgeship slots authorized by Congress, from districts with only a single authorized judgeship to districts with as many as 28. Vacancies as a proportion of total authorized judgeships is thus another factor that may be relevant to understanding the likely burden on a district from a vacancy. Indeed, chief judges and court administrators in four of the 10 profiled districts highlighted the number of vacant seats as a percentage of total judgeships when discussing the impact of vacancies on their district (D. Ariz., D. Nev., E.D. Tex., W.D. Wis.).⁹⁵

For example, the District Executive for the District of Nevada explained how the workload in his district became significantly more manageable when his district went from having four of seven active judges to six of seven, because cases could be distributed among more judges. “Obviously, when you only have four of seven judges, all of their filings increased dramatically, which results in more work for them to do,” he explained. “There’s more stress, and less ability to get the job done like they’re used to.”⁹⁶ He estimated that when there were three vacancies, each active judge had about 650 civil cases; with each vacancy filled, the remaining judges were able to reallocate 50-75 cases.⁹⁷

Likewise, districts with only a few authorized judgeships may be particularly hard-hit by vacancies because they have limited capacity to compensate for the loss of judges. For example, in the Western District of Wisconsin, a district with two authorized judgeships, the Clerk of Court explained that his district could not “keep pace” when the two judgeships became vacant in quick succession in 2008-2009, with one judge taking senior status and one retiring. One of the two vacancies remained open for more than five years, until May 2014. The district’s case management statistics reflect the challenges the district faced during this period; the number of pending cases in the district jumped from 610 in 2008 to 1,024 in 2013, while the number of filed cases increased by less than 150 cases.⁹⁸

The experience in these districts suggests that vacancies as a proportion of total judgeships is another relevant factor in understanding districts’ capacity to compensate for vacant judgeships, with small districts warranting particular attention.

D. Geographic Size

Districts that are geographically dispersed may also face unique challenges in allocating resources when vacancies arise, as reflected by the experiences in the Eastern District of Texas and Middle District of Florida.

For example, in the Middle District of Florida, which has 15 judgeships spread over five divisions, the Chief Judge explained, “It’s not like we have everyone in one building, where we can just move people easily to respond to needs.” She added, “[Having a vacancy] means we need to constantly juggle resources.”⁹⁹ This juggling also impacts litigants. One attorney who practices in the district recounted that due to a vacancy, a patent case in the Jacksonville Division was heard 150 miles away in Orlando. Local counsel and the client were required to spend three weeks in Orlando for the trial, adding substantial costs for the client.¹⁰⁰

Similarly, in the Eastern District of Texas, which has eight judgeships spread over six different divisions, two judges regularly travel 350 miles each way to help compensate for one of the district's vacancies, while another judge regularly travels 150 miles to help compensate for the other vacancy. Together, these judges spend several days per month simply traveling — taking time away from hearing cases, deciding motions, and managing their dockets.¹⁰¹ These experiences suggest that a district's geographic size is another factor relevant to understanding the likely impact of vacancies.

E. Use of Magistrate Judges and Other Administrative Variations

Finally, districts also varied in their administrative responses to vacancies in ways that likely impacted their ability to compensate for empty seats.

For example, the Western District of New York undertook efforts to “streamline” its process for hearing cases in response to a vacancy, expanding its alternative dispute resolution program and introducing a program utilizing attorney law clerks to review habeas petitions and motions by self-represented litigants.¹⁰² Likewise, since Magistrate Judges can resolve civil cases with the consent of both sides, two districts reported integrating Magistrate Judges into their civil case assignment wheels, in an effort to encourage consent and alleviate the burdens on sitting judges (E.D. Tex., W.D. Wis.).¹⁰³

Three districts likewise reported relying heavily on visiting judges to help compensate for vacancies (D. Ariz., E.D. Cal., M.D. Fla.),¹⁰⁴ although several judges and practitioners emphasized that visiting judges' lack of familiarity with local practices and the composition of the local docket limited their utility. Finally, some interviewees suggested that some districts were also simply more efficient than others in managing heavy dockets, making them better able to cope with empty seats.¹⁰⁵ The experiences in the profiled districts thus suggest that variations in court culture and practices are also relevant to understanding the practical impact of vacancies on our trial courts.

V. CONCLUSION

The experiences in the profiled districts illustrate the real costs imposed by vacancies on the people and businesses that rely on our courts. While numerous factors impact which vacancies are likely to have the most severe effect on the administration of justice, this study suggests that around the country, vacancies make it harder for trial courts to keep their promise of delivering equal justice for all.

ENDNOTES

- ¹ ALICIA BANNON, BRENNAN CENTER FOR JUSTICE, FEDERAL JUDICIAL VACANCIES: THE TRIAL COURTS I (2013), *available at* <http://www.brennancenter.org/sites/default/files/publications/Judicial%20Vacancies%20Report%20Final%20-%20web.pdf>.
- ² *See* ALLIANCE FOR JUSTICE, THE STATE OF THE JUDICIARY: JUDICIAL SELECTION DURING THE 113TH CONGRESS 5 (2014), *available at* <http://www.afj.org/reports/the-state-of-the-judiciary-judicial-selection-during-the-113th-congress>. However, the total number of trial court vacancies remains substantially higher than at an equivalent point during President Bush's term (50 vs. 29 as of July 1), with vacancy levels now slightly lower than what existed during an equivalent point in President Clinton's term (54).
- ³ Data as of July 14, 2014. *See* Administrative Office of the United States Courts, Article III Vacancies – As of July 14, 2014, <http://www.uscourts.gov/JudgesAndJudgeships/JudicialVacancies.aspx>.
- ⁴ Data as of July 14, 2014. *See* Administrative Office of the United States Courts, Future Vacancies in the Federal Judiciary, <http://www.uscourts.gov/JudgesAndJudgeships/JudicialVacancies/FutureJudicialVacancies.aspx>.
- ⁵ BANNON, *supra* note 1.
- ⁶ Telephone Interview with Anne C. Conway, Chief Judge, M.D. Fla. (Mar. 6, 2014).
- ⁷ The following six districts were also initially considered for the analysis, but were excluded when the district's Chief Judge did not respond to interview requests or declined to participate: Northern District of Georgia, Western District of Kentucky, District of Massachusetts, Eastern District of North Carolina, Eastern District of Pennsylvania, and Southern District of Texas.
- ⁸ Telephone Interview with Raner C. Collins, Chief Judge, D. Ariz. (Oct. 11, 2013); Telephone Interview with Morrison C. England, Jr., Chief Judge, E.D. Cal. (Oct. 11, 2013); Telephone Interview with Claudia Wilken, Chief Judge, N.D. Cal. (Oct. 10, 2013); Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Telephone Interview with Lance S. Wilson, District Court Executive, D. Nev. (Feb. 27, 2014); Telephone Interview with William M. Skretny, Chief Judge, W.D.N.Y. (Oct. 16, 2013); Telephone Interview with Michael Roemer, Clerk of Court, W.D.N.Y. (Oct. 23, 2013); Telephone Interview with Leonard Davis, Chief Judge, E.D. Tex. (Feb. 26, 2014); Telephone Interview with Peter Oppeneer, Clerk of Court and U.S. Magistrate Judge, W.D. Wis. (Sept. 19, 2013).
- ⁹ Interview with Anne C. Conway (M.D. Fla.), *supra* note 6.
- ¹⁰ Analysis on file with the Brennan Center for Justice. Data on the percentage of cases three or more years old is from Administrative Office of the United States Courts, Federal Court Management Statistics, <http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-september-2012.aspx>. Data on judicial vacancies is from Administrative Office of the United States Courts, Article III Vacancies – As of June 18, 2014, <http://www.uscourts.gov/JudgesAndJudgeships/JudicialVacancies.aspx>. All data covers the 12-month period ending September 30, 2012.
- ¹¹ Data analysis was undertaken by Oliver Roeder, Economics Fellow at the Brennan Center. The findings are based on an ordinary least squares regression, which examined the relationship between the number of months judicial seats had been vacant in a district and the percentage of cases pending in that district for three years or more, controlling for the district's number of weighted filings per judgeship. Results were statistically significant at the 5 percent level. Data on vacant judgeship months and weighted filings per judgeship is from the Administrative Office of the United States Courts, Federal Court Management Statistics, *supra* note 10. Data on the percentage of cases pending for three years or more is from ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS tbl. C-6 (2012), *available at* <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2012/appendices/C06Sep12.pdf>. All data covers the 12-month period ending September 30, 2012. Calculations are on file with the Brennan Center.

- ¹² *U.S. District Court — Judicial Caseload Profile: California Eastern*, U.S. Crs., <http://www.uscourts.gov/uscourts/Statistics/FederalCourtManagementStatistics/2013/district-fcms-profiles-december-2013.pdf> (last visited June 16, 2014).
- ¹³ *Id.*
- ¹⁴ Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8.
- ¹⁵ Interview with Raner C. Collins (D. Ariz.), *supra* note 8; Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Claudia Wilken (N.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6.
- ¹⁶ Interview with Raner C. Collins (D. Ariz.), *supra* note 8; Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Claudia Wilken (N.D. Cal.), *supra* note 8; Interview with Michael Roemer (W.D.N.Y.), *supra* note 8.
- ¹⁷ Interview with Claudia Wilken (N.D. Cal.), *supra* note 8.
- ¹⁸ Interview with Raner C. Collins (D. Ariz.), *supra* note 8.
- ¹⁹ Interview with William M. Skretny (W.D.N.Y.), *supra* note 8; *see also* Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8 (“We have [habeas] cases that have been going on for years because there are not enough judges to handle them.”).
- ²⁰ Telephone Interview with David Maland, Clerk of Court, E.D. Tex. (Feb. 26, 2014).
- ²¹ Telephone Interview with G. Talmadge Nix, III, Nix & Poet, Attorneys at Law, Sherman, Tex. (Mar. 31, 2014); *see also* Telephone Interview with John Hunter Smith, Wynne & Smith, Sherman, Tex. (Mar. 31, 2014).
- ²² Data analysis was undertaken by Oliver Roeder, Economics Fellow with the Brennan Center. The findings are based on an ordinary least squares regression, which examined the relationship between the number of months judicial seats had been vacant in a district and the median time from filing to disposition for felony criminal cases, controlling for the district’s number of weighted filings per judgeship. Results were statistically significant at the .1 percent level. Data is from the Administrative Office of the United States Courts, Federal Court Management Statistics, *supra* note 10. All data covers the 12-month period ending September 30, 2012. Calculations are on file at the Brennan Center.
- ²³ Interview with Raner C. Collins (D. Ariz.), *supra* note 8; Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Claudia Wilken (N.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Interview with William M. Skretny (W.D.N.Y.), *supra* note 8; Interview with David Maland (E.D. Tex.), *supra* note 20; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ²⁴ Interview with William M. Skretny (W.D.N.Y.), *supra* note 8.
- ²⁵ Interview with Raner C. Collins (D. Ariz.), *supra* note 8.
- ²⁶ Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8.
- ²⁷ Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Claudia Wilken (N.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6.
- ²⁸ Interview with Anne C. Conway (M.D. Fla.), *supra* note 6.
- ²⁹ Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ³⁰ Interview with William M. Skretny (W.D.N.Y.), *supra* note 8.
- ³¹ Interview with Donald L. Gaffney, Partner, Snell & Wilmer L.L.P., Phx., Ariz. (Dec. 3, 2013).

- ³² Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ³³ Interview with David Maland (E.D. Tex.), *supra* note 20.
- ³⁴ *Id.*
- ³⁵ *U.S. District Court — Judicial Caseload Profile: Texas Eastern*, U.S. CTS., <http://www.uscourts.gov/uscourts/Statistics/FederalCourtManagementStatistics/2013/district-fcms-profiles-december-2013.pdf> (last visited June 16, 2014); *Archive of Judicial Vacancies*, U.S. CTS., <http://www.uscourts.gov/JudgesAndJudgeships/JudicialVacancies/ArchiveOfJudicialVacancies.aspx> (last visited June 16, 2014).
- ³⁶ Interview with John Hunter Smith (E.D. Tex.), *supra* note 21.
- ³⁷ Interview with G. Talmadge Nix, III (E.D. Tex.), *supra* note 21.
- ³⁸ *Id.*
- ³⁹ Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ⁴⁰ *Id.*
- ⁴¹ Telephone Interview with Roger Sanders, Sanders, O’Hanlon, Motley & Young, Sherman, Tex. (Mar. 31, 2014).
- ⁴² *See* Letter to President Barack H. Obama from Grayson County Bar Association (Feb. 7, 2014) (unpublished letter on file with the Brennan Center).
- ⁴³ Interview with Roger Sanders (E.D. Tex.), *supra* note 41.
- ⁴⁴ Interview with Raner C. Collins (D. Ariz.), *supra* note 8 (“I try to give cases the same level of attention, but I can’t help but think there’s an impact [from vacancies].”); Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Interview with William M. Skretny (W.D.N.Y.), *supra* note 8 (“The more cases you have, the less time you can spend on any case. If the vacancies were filled, we could allocate our assignments better and spend more time on cases.”); Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ⁴⁵ *See* Jason Best & Lydia Brashear Tiede, *Vacancy in Justice: Analyzing the Impact of Overburdened Judges on Sentencing Decisions* (Paper posted on Social Science Research Network dated Mar. 28, 2014), *available at* <http://ssrn.com/abstract=2417348> or <http://dx.doi.org/10.2139/ssrn.2417348> (empirical analysis finding that judges overburdened due to vacancies use shortcuts resulting in harsher criminal sentences, and finding that this effect is concentrated in vacancies caused by reasons other than a judge taking senior status); Brian Sheppard, *Judging Under Pressure: A Behavioral Examination of the Relationship Between Legal Decisionmaking and Time*, 39 FLA. ST. U. L. REV. 931 (2012) (using a judicial simulation with law students, finding that fewer resources increased the likelihood of straightforward applications of the law while reducing judges’ conviction that they had reached righteous outcomes in their cases); Bert I. Huang, *Lightened Scrutiny*, 124 HARV. L. REV. 1109 (2011) (empirical evidence suggests causal link between judicial burdens and lightened levels of appellate scrutiny of lower court decisions); Diarmuid F. O’Scannlain, *Striking A Devil’s Bargain: The Federal Courts and Expanding Caseloads in the Twenty-First Century*, 13 LEWIS & CLARK L. REV. 473, 476 (2009) (Ninth Circuit judge arguing that “[i]mpossibly large dockets and administrative responsibilities have forced us to create a system that might be called, with only slight exaggeration, ‘assembly-line justice’”).
- ⁴⁶ Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ⁴⁷ Telephone Interview with Timothy J. Buchanan, Partner, McCormick, Barstow, Sheppard, Wayte & Carruth LLP, Fresno, Cal. (Dec. 4, 2013); *see also* Telephone Interview with Tom Higgins, Owner, Law Offices of Tom Higgins, Tuscon, Ariz. (Nov. 22, 2013) (arguing that it would be better for clients for judges to have more time to spend on cases).
- ⁴⁸ Interview with Anne C. Conway (M.D. Fla.), *supra* note 6.

- ⁴⁹ *Id.*
- ⁵⁰ Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Claudia Wilken (N.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Interview with Leonard Davis (E.D. Tex.), *supra* note 8; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁵¹ Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ⁵² E-mail from Karen Redmond, Public Information Officer, Admin. Office of the U.S. Cts., to author (May 16, 2014) (on file with the Brennan Center).
- ⁵³ Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ⁵⁴ E-mail from Karen Redmond, *supra* note 52.
- ⁵⁵ Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁵⁶ Interview with Claudia Wilken (N.D. Cal.), *supra* note 8.
- ⁵⁷ Interview with Raner C. Collins (D. Ariz.), *supra* note 8; Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Claudia Wilken (N.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Telephone Interview with Federico A. Moreno, Chief Judge, S.D. Fla. (Mar. 25, 2014); Interview with Lance S. Wilson (D. Nev.), *supra* note 8; Interview with William M. Skretny (W.D.N.Y.), *supra* note 8; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁵⁸ Interview with Claudia Wilken (N.D. Cal.), *supra* note 8.
- ⁵⁹ Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Federico A. Moreno (S.D. Fla.), *supra* note 57; Interview with Lance S. Wilson (D. Nev.), *supra* note 8; Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ⁶⁰ Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ⁶¹ *Id.*
- ⁶² *Id.*
- ⁶³ Interview with Federico A. Moreno (S.D. Fla.), *supra* note 57.
- ⁶⁴ *Id.*
- ⁶⁵ Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁶⁶ Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8.
- ⁶⁷ Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁶⁸ Interview with Timothy J. Buchanan (E.D. Cal.), *supra* note 47.
- ⁶⁹ Interview with Isaac D. Rothschild, Attorney, Mesch, Clark, & Rothschild, P.C., Tuscon, Ariz. (Oct. 20, 2013).
- ⁷⁰ Interview with Tom Higgins (D. Ariz.), *supra* note 47.
- ⁷¹ Telephone Interview with Ava Doppelt, S'holder, Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., Orlando, Fla. (May 8, 2014).

- ⁷² Interview with Raner C. Collins (D. Ariz.), *supra* note 8; Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ⁷³ Interview with Federico A. Moreno (S.D. Fla.), *supra* note 57; Telephone Interview with Gerald E. Rosen, Chief Judge, E.D. Mich. (Sept. 13, 2013).
- ⁷⁴ Interview with Raner C. Collins (D. Ariz.), *supra* note 8; Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Interview with Federico A. Moreno (S.D. Fla.), *supra* note 57; Interview with Gerald E. Rosen (E.D. Mich.), *supra* note 73; Interview with Lance S. Wilson (D. Nev.), *supra* note 8; Interview with William M. Skretny (W.D.N.Y.), *supra* note 8; Interview with Michael Roemer (W.D.N.Y.), *supra* note 8; Interview with David Maland (E.D. Tex.), *supra* note 20; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁷⁵ 28 U.S.C. § 371.
- ⁷⁶ See Hon. Frederic Block, *Senior Status: An “Active” Senior Judge Corrects Some Common Misunderstandings*, 92 CORNELL L. REV. 533, 540 (2007) (senior judges on average carry approximately 50 percent of an active judge’s workload, but amounts vary widely across districts); Stephen B. Burbank et al., *Leaving the Bench, 1970-2009: The Choices Federal Judges Make, What Influences Those Choices, And Their Consequences*, 161 U. PA. L. REV. 1, 29 (2012) (senior district court judges with chambers and staff carry approximately 63 percent of an active judge’s caseload); Federal Judicial Center, Biographical Directory of Federal Judges, 1789-present, <http://www.fjc.gov/history/home.nsf/page/judges.html> (providing information on senior judges in each district).
- ⁷⁷ Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Telephone Interview with Marianne Matherly, Clerk of Court, E.D. Cal. (Oct. 23, 2013) (senior judge in Fresno carrying a caseload of roughly 1100 cases); Interview with William M. Skretny (W.D.N.Y.), *supra* note 8; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁷⁸ Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁷⁹ Interview with Gerald E. Rosen (E.D. Mich.), *supra* note 73.
- ⁸⁰ Interview with Federico A. Moreno (S.D. Fla.), *supra* note 57.
- ⁸¹ Interview with Raner C. Collins (D. Ariz.), *supra* note 8; Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ⁸² Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8.
- ⁸³ See Administrative Office of the United States Courts, Article III Vacancies – As of July 7, 2014, *supra* note 3.
- ⁸⁴ Interview with Raner C. Collins (D. Ariz.), *supra* note 8; Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Claudia Wilken (N.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Interview with William M. Skretny (W.D.N.Y.), *supra* note 8; Interview with Leonard Davis (E.D. Tex.), *supra* note 8; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁸⁵ See *U.S. District Court — Judicial Caseload Profile*, U.S. CTS., <http://www.uscourts.gov/uscourts/Statistics/FederalCourt-ManagementStatistics/2013/district-fcms-profiles-december-2013.pdf> (last visited July 14, 2014).
- ⁸⁶ Interview with Anne C. Conway (M.D. Fla.), *supra* note 6.
- ⁸⁷ Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ⁸⁸ Interview with William M. Skretny (W.D.N.Y.), *supra* note 8.
- ⁸⁹ See Judicial Conference Judgeship Recommendations (Mar. 2013), *available at* <http://www.uscourts.gov/uscourts/JudgesJudgeships/docs/judgeship-recommendations.pdf>.

- ⁹⁰ Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Claudia Wilken (N.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6; Interview with Lance S. Wilson (D. Nev.), *supra* note 8; Interview with William M. Skretny (W.D.N.Y.), *supra* note 8; Interview with Leonard Davis (E.D. Tex.), *supra* note 8; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁹¹ Interview with Federico A. Moreno (S.D. Fla.), *supra* note 57.
- ⁹² District court judicial emergencies are defined as any vacancy where weighted filings are in excess of 600 per judgeship, or any vacancy in existence more than 18 months where weighted filings are between 430 to 600 per judgeship, or any court with more than one authorized judgeship and only one active judge. See Administrative Office of the United States Courts, Judicial Emergencies, <http://www.uscourts.gov/JudgesAndJudgeships/JudicialVacancies/JudicialEmergencies.aspx> (last visited June 23, 2014).
- ⁹³ See Judicial Conference Judgeship Recommendations, *supra* note 89. A district court with more than 430 weighted filings per authorized judgeship is eligible to request an additional judgeship. The Judicial Conference only recommends additional judgeships if so requested by the district. See *United States Government Accountability Office, Federal Judgeships: The General Accuracy of District and Appellate Judgeship Case-Related Workload Measures, Statement for the Record to the Subcommittee on Bankruptcy and the Courts, Committee on the Judiciary, U.S. Senate 3* (2013) (statement of David C. Maurer, Director, Homeland Security and Justice Issues), available at <http://www.gao.gov/assets/660/657661.pdf>.
- ⁹⁴ Effective vacancies were calculated by adding each district's existing vacancies and proposed new judgeships, divided by the total authorized judgeships and proposed new judgeships. Figures are as of July 14, 2014.
- ⁹⁵ Interview with Raner C. Collins (D. Ariz.), *supra* note 8; Interview with Lance S. Wilson (D. Nev.), *supra* note 8; Interview with Leonard Davis (E.D. Tex.), *supra* note 8; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ⁹⁶ Interview with Lance S. Wilson (D. Nev.), *supra* note 8.
- ⁹⁷ *Id.*
- ⁹⁸ See *U.S. District Court — Judicial Caseload Profile: Wisconsin Western*, U.S. Cts., <http://www.uscourts.gov/uscourts/Statistics/FederalCourtManagementStatistics/2013/district-fcms-profiles-december-2013.pdf> (last visited July 14, 2014) (data for 12 month period ending September 30).
- ⁹⁹ Interview with Anne C. Conway (M.D. Fla.), *supra* note 6.
- ¹⁰⁰ Interview with Ava Doppelt (M.D. Fla.), *supra* note 71.
- ¹⁰¹ Interview with Leonard Davis (E.D. Tex.), *supra* note 8.
- ¹⁰² Interview with William M. Skretny (W.D.N.Y.), *supra* note 8.
- ¹⁰³ Interview with Leonard Davis (E.D. Tex.), *supra* note 8; Interview with Peter Oppeneer (W.D. Wis.), *supra* note 8.
- ¹⁰⁴ Interview with Raner C. Collins (D. Ariz.), *supra* note 8; Interview with Morrison C. England, Jr. (E.D. Cal.), *supra* note 8; Interview with Anne C. Conway (M.D. Fla.), *supra* note 6.
- ¹⁰⁵ Interview with Ava Doppelt (M.D. Fla.), *supra* note 71 (favorably comparing the Middle District of Florida to other districts in which she has practiced); Interview with Federico A. Moreno (S.D. Fla.), *supra* note 57.

STAY CONNECTED TO THE BRENNAN CENTER

Visit our website at www.brennancenter.org.
Sign up for our electronic newsletters at www.brennancenter.org/signup.

Latest News | Up-to-the-minute info on our work, publications, events, and more.

Voting Newsletter | Latest developments, state updates, new research, and media roundup.

Justice Update | Snapshot of our justice work and latest developments in the field.

Fair Courts | Comprehensive news roundup spotlighting judges and the courts.

Money in Politics | Latest state & national developments, original analysis, and more.

Liberty & National Security | Updates on privacy, government oversight, and accountability.

Twitter | www.twitter.com/BrennanCenter
Facebook | www.facebook.com/BrennanCenter

BRENNAN
CENTER
FOR JUSTICE

at New York University School of Law

161 Avenue of the Americas
12th Floor
New York, NY 10013
646-292-8310
www.brennancenter.org