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## Making law in the United States Courts of Appeals.

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fail to create innovative policies. However, presidents rarely display this last type of policy behavior (242–43).

Kessel recognizes that his theory is very simplistic and that a better approach for classifying presidents would account for varying degrees of presidential expertise and attitudes. A further problem with the matrix is that the concept of attitudes is not clearly defined. More serious is that Kessel does not clearly demonstrate how his theory directly relates to his core thesis regarding the institutional presidency. Instead, the role of executive departments and the White House staff fades away from his discussion.

In sum, Kessel provides a wealth of descriptive information that will benefit scholars who seek to expand or refresh their knowledge about the institutional presidency. Undergraduates will find Kessel's book to be very readable and engaging because of his attention to historical details and the incorporation of material from personal interviews. Furthermore, this study should foster in students a greater appreciation for the administrative challenges that the George W. Bush administration is confronting when dealing with homeland security and terrorism.

Adam L. Warber, *Clemson University*

*Making Law in the United States Courts of Appeals.* By David E. Klein. (New York: Cambridge University Press, 2002. Pp. x, 180. \$55.00 cloth, \$20.00 paper.)

The title of this book accurately reflects that it is a study whose analysis is confined to the decisions of the United States Courts of Appeals, particularly those cases in which the courts are engaged overtly in the making of new legal policy. But one would be badly mistaken to assume that the analysis and conclusions boldly spelled out by Professor David E. Klein are relevant to or of interest only to those with a particular concern with the intermediate appellate courts. Instead, this book has important things to say about the nature of the judicial process and how we understand the role of law in our legal system. It is one of the more important books on law and courts that has been written in recent years and should qualify as a must-read for all scholars in the law and courts community.

Due to limits on their control of their docket, the courts of appeals decide many cases that involve the straightforward application of settled law. Nevertheless, the courts also have the opportunity to decide a substantial number of cases in which there is neither an existing legal rule nor a Supreme Court precedent that clearly governs the principal issue before the judges. It is these opportunities for rule making that are the subject of Klein's analysis. Specifically, he examines all the decisions between 1984 and 1991 that announce new legal rules in three areas of law: antitrust, search and seizure, and environmental law.

The primary goal of the analysis is to "better understand the influences at play in circuit judges' decisions on unsettled issues of law" (133). The central concern

is to understand two types of interactions: those among circuit judges and the hierarchical relations between circuit judges and the Supreme Court. Examining those two types of interactions, Professor Klein pays particular attention to the relative significance of law, judicial preferences, and strategic calculations. A series of specific hypotheses is generated from a review of previous studies of appellate courts and from in-depth interviews with 24 judges on the U.S. Courts of Appeals.

The interviews suggest that a substantial majority of the judges are willing to acknowledge that achieving legal rules that are consistent with their political preferences is a legitimate goal in a nontrivial number of cases. However, virtually all of the judges also claimed that achieving legally sound decisions was an important goal for them. Moreover, while much of the political science literature on judicial decision making (e.g., Spaeth and Segal 1999) treats these policy and legal goals as incompatible with each other, the judges do not.

To examine the hypotheses that both these policy and legal goals matter, Klein examines the decisions that judges make when they are confronted with the choice of whether to adopt the rule announced by other circuit judges to the issue before them when the Supreme Court has not yet ruled on the issue. The results of his multivariate probit analysis of 300 decisions indicates that consistent with the expectations derived from the Attitudinal Model, the ideological proximity of the median judge on a given panel to the ideology of the panel that first announced the rule is significantly related to the probability that the new rule will be adopted. However, the results suggest that a number of other variables that appear to be more consistent with a goal of achieving sound legal decisions are also significantly related to appeals court judges' decisions. Judges give strong deference to a rule adopted by another panel of their own circuit as "required" by circuit legal norms regardless of the ideology of the original panel or the ideological direction of the rule. When a rule was first adopted by another panel, the greater the number of other circuits to have adopted the rule, the greater the likelihood that the next panel would adopt the rule. In addition, the prestige and expertise of the judge writing the first opinion that announced the rule have a significant effect on the likelihood that subsequent panels will adopt the rule. However, the extent to which the rule is consistent with the preferences of the current majority of the Supreme Court is unrelated to appeals court decisions. These legal influences appear to be relevant in all three of the issue areas examined.

Interpreting the quantitative results while reflecting on the views of the judges expressed in interviews, Klein makes a convincing argument that circuit judges "seemed to act with little regard for what the Supreme Court might think" (134). Precedent announced by the Supreme Court appears to weigh heavily in the calculus of the judges; but in the absence of clear precedent, there was little evidence in either the quantitative analysis or the interview data that the current or future views of the Supreme Court or the likelihood of reversal had any substantial effect on the decisions of appeals court judges in policy-making situations. This lack of concern with reversal may reflect the reality that the courts of

appeals are rarely reviewed. Even in these cases that involved explicit rule making by the courts of appeals, only 4% of the decisions were reviewed by the Supreme Court.

Overall, this is an important book for both its methodological and substantive contributions. The quantitative analysis in this book appears to be well designed and executed with great care. Care is taken and good choices are made both with decisions about how to measure phenomena and how to conduct the statistical analysis. A superb job is done of blending the results from this quantitative analysis with insights gained from the elite interviews. Given the clarity of the explanation of the methods, the care with which hypotheses are derived from theory, the creative manner in which measures are constructed for the test of those hypotheses, and the skill with which the results from these multiple approaches are interpreted, this relatively short book could be used very effectively in a graduate course on research methods. David Klein neatly demonstrates how good research is carried out.

Substantively, this book makes an important contribution to the way we think about the relevance of law for judicial decision making. Klein makes a persuasive argument that making legally sound decisions is an important goal for many (perhaps most) judges at all levels. His analysis convincingly supports his conclusion that judges often share both a concern for legal soundness and common standards for evaluating it. This has a significant impact on their decision making even after one controls for the effects of political preferences.

In one sense, this book does not directly affect the debate in the discipline over the adequacy of the Attitudinal Model as a complete and sufficient explanation of decision making on the Supreme Court because a different court is examined. But Klein's argument that the differences between the institutional contexts of decision making on the Supreme Court and the courts of appeals have been overstated is convincing. Thus, the importance of legal soundness as a goal of judicial decision making is quite plausibly as true for the Supreme Court as for the "lower" courts. In any event, the analysis in this book suggests that in future studies of the Supreme Court it would be fruitful to abandon the exclusive preoccupation with investigating whether legal rules act as *restraints* on judicial decision making and instead investigate whether on the Supreme Court, as on the courts of appeals, legal soundness is an important *goal* that leads to the active search for legally appealing solutions.

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*The View from the States: National Politics in Local Newspaper Editorials.* By Jan Vermeer. (Lanham, MD: Rowman and Littlefield, 2002. Pp. 176. \$75.00 cloth, \$26.95 paper.)

In the early 1990s, I interviewed a prominent member of the Illinois State Senate, and I asked him how important editorials in local papers are. He said