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Judicial Influence and the United States Federal District Courts: A Case Study

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Judicial Influence and the United States Federal District Courts: A Case Study

Justin Hickerson

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Robert Love Taylor (see Image 1) was born in Embreeville, Tennessee (a small town in East Tennessee, near the border of North Carolina) on December 20, 1899. Born into a politically prominent family, Robert Taylor was the son of Tennessee Governor Alfred Taylor (1921-1923) and nephew of Tennessee Governor and U.S. Senator Robert Love Taylor (1887-1891; 1897-1899), his namesake (*Tennessee Blue Book* 2010; Susano 2009). For his undergraduate degree, Taylor attended Milligan College, where he earned a bachelor's degree in philosophy (Susano 2009). Robert Taylor attended law school at Vanderbilt University in Nashville, Tennessee, from 1921-1923, then transferred to Yale for his third and final year, graduating in 1924 (Murrian 1987). After graduating from law school, Taylor returned to Tennessee and began practicing at the firm of Cox, Taylor, Epps, Miller & Wilson in Johnson City. Taylor was engaged in private practice from 1924 to 1949, at which point he was appointed to the United States District Court for Eastern District of Tennessee by President Harry S. Truman on November 2, 1949 (Susano 2009). Judge Taylor assumed senior status in 1984, which meant that, although he was semi-retired, he still continued to hear cases at his discretion (Balloch 1984). When he became a senior judge, he was 85 years old, thus making him “the nation’s oldest active federal judge” (“U.S. Judge Taylor” *Nashville Tennessean*). He continued to serve in this capacity until his death on July 11, 1987 (Susano 2009).

This paper will show that East Tennessee Federal District Judge Robert L. Taylor is a prime example of the influence that a single judge can have on the federal judicial system. Judge Taylor’s influence will be proven by an examination of the following factors: caseload management, affirmation/reversal rate of his decisions, citations of his decisions in other cases, the impact of his decisions on East Tennessee, and on the federal judiciary generally, and other miscellaneous categories.

II. AN OVERVIEW OF THE FEDERAL JUDICIAL COURT SYSTEM

Before I begin my discussion about Judge Taylor, I will briefly describe the federal court system. There are three distinct tiers within the federal court system: district courts, appellate courts, and the Supreme Court. These tiers were formed under the Judiciary Act of 1789 and still exist today (Wilson 2012).

United States District Courts are the lowest tier of the federal judiciary. Most cases heard in federal court are resolved at this level. The boundaries of district courts are established by Congress, with at least one district court per state (Carp, Stidham & Manning 2007). There are currently 677 district judges hearing cases in all 50 states, the District of Columbia, Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands (United States Courts “Judges & Judgeships” 2014). When a vacancy occurs on a district court, or when Congress creates a new judgeship, the president of the United States nominates an individual to fill the position. Of vital importance at this stage of the appointment process is a practice known as senatorial courtesy. Under senatorial courtesy, the president typically asks senators from the state where the vacant judgeship exists for advice in choosing a nominee. This practice began in 1789, when President George Washington’s nominee for a federal position in Georgia was not confirmed by the Senate because the senators from Georgia opposed his nominee (Lyles 1997). Since then, presidents have asked each senator from the affected state to provide the name of someone that he/she would like to see nominated. While a recommendation from a senator of the party opposing the president does carry substantial weight, one from a senator of the president’s party is even more influential (Carp, Stidham & Manning 2007).

Once someone is nominated, his/her name is given to the Senate Judiciary Committee. A background check is conducted by the Federal Bureau of Investigation (FBI), and the Judiciary Committee conducts a hearing where witnesses may speak in favor of or in opposition to the

nominee. Typically, Supreme Court nominees appear before the Committee and give testimony (speak and answer questions), but this is less common for lower court nominees. In addition, the American Bar Association (ABA) submits a report to the Committee detailing why the organization supports or opposes a nominee. Other interest groups, like the National Rifle Association (NRA) may submit similar reports to the Committee and lobby senators to vote “yes” or “no” on the nomination (Lyles 1997). The Committee then votes to determine if the nominee should be voted on by the full Senate body. If the nomination is approved by the Committee, the nomination is brought to the Senate floor, where any/all senators may speak on the nomination. If a majority of the Senate (51) votes in favor of the nominee, he/she assumes the federal judgeship to which he/she was nominated (American Constitution Society 2014).

The types of cases heard by federal district courts are outlined in Article III, Section 2 of the Constitution. A district court possesses the following types of jurisdiction: federal question jurisdiction, diversity jurisdiction, and supplemental jurisdiction. Under federal question jurisdiction, a district court hears all cases pertaining to federal statutes or the U.S. Constitution. Diversity jurisdiction gives district courts the right to hear cases involving disputes between citizens of different states. In order for a case to fall under diversity jurisdiction, it must meet two requirements: no litigants can be from the same state, and the suit must make a claim in excess of \$75,000. While the above types of jurisdiction are nondiscretionary, under supplemental jurisdiction, a judge has the authority to decide whether or not he/she wants to hear a case (Wilson 2012). A federal district court may “hear a case that would normally be under the jurisdiction of a state court if the dispute is related to a claim that could be brought before the federal court” (Wilson 2012, 76). For example, a case could be heard under supplemental jurisdiction if one party is alleged to have violated a federal law (such as the Fair Labor

Standards Act) and also committed an act which would normally be heard by a state court (such as personal property damage). A district judge could agree to hear the case and resolve both the federal matter and state matter in one ruling (Wilson 2012). In 2013, 363,914 cases were filed in U.S. District Courts (United States Courts “Statistics” 2014).

District courts hear both civil and criminal litigation. In criminal cases, the federal government prosecutes an individual for a violation or violations of a federal criminal statute. In these cases, the United States is the party prosecuting the case, and the defendant is the alleged criminal (Carp, Stidham & Manning 2007). An example of criminal litigation heard by a federal court is the prosecution of an individual for violations of federal firearms law. Civil cases involve disputes between individuals, disputes between corporations, and litigation over contracts and admiralty law. The party that initiates the suit is referred to as the plaintiff, and the party responding to the suit is known as the defendant (Carp, Stidham & Manning 2007). An example of civil litigation heard by a federal court is a land dispute between a citizen in East Tennessee and a citizen in North Carolina. The majority of litigation heard by federal district courts are civil cases (Federal Judicial Center 2006). Other examples of civil cases include patent litigation and maritime disputes (Federal Judicial Center 2006).

Since 1903, Congress has mandated that some district court cases be heard by three-judge panels. The three judges include at least one district court judge and one court of appeals judge. These panels originally heard litigation involving the Sherman Antitrust Act and the Interstate Commerce Act; however, their purview was expanded to include “suits brought by private citizens challenging the constitutionality of state or federal statutes and seeking injunctions to prevent enforcement of challenged statutes” (Carp, Stidham & Manning 2007, 41). The use of panels expanded to include litigation involving the Civil Rights Act, passed in 1964 and the

Voting Rights Act, passed in 1965. Due to the expanding caseload of the federal judiciary, however, the use of three-judge panels was significantly limited by Congress in 1976. Currently, the only cases heard by three-judge panels are those involving reapportionment, redistricting, and civil rights (Carp, Stidham & Manning 2007).

District courts play a vital role in the judicial process because they are where witnesses are examined and evidence is introduced. These factors form the factual record of a case, which will be examined by appellate courts if the case is appealed. The facts of a case are determined by one of two processes: a jury trial or bench trial. The right to a jury, known as a petit jury, is guaranteed by the Sixth Amendment of the Constitution, which confers this right in criminal cases, and the Seventh Amendment, which grants this right in civil cases. In a criminal case, twelve jurors determine the facts of the case and decide whether the defendant is guilty or not guilty based on the “beyond a reasonable doubt” standard (Carp, Stidham & Manning 2007, 246). A civil jury, comprised of between six to twelve jurors, decide the facts of the case and render a judgment in favor of the plaintiff or defendant using the “preponderance of the evidence standard” (Carp, Stidham & Manning 2007, 283). If both parties waive their right to a jury trial, their case will become a bench trial. Under this process, the judge, not a jury, decides the facts of the case and rules on the guilt or innocence of the defendant in a criminal case or determines the winning party in a civil suit (Carp, Stidham & Manning 2007). In order to enforce his/her ruling, a judge may issue an injunction. Injunctions are typically seen only in civil cases and “restrain [...] private parties from committing allegedly illegal acts” (Murphy et. al. 2006, 303). For example, a judge could order a defendant not to cut down the plaintiff’s tree that hangs partially on the defendant’s property. If an injunction is violated, the transgressor can face fines or even jail time (Murphy 2006). Regardless of the outcome in a civil case, if the losing party is unhappy

with the verdict rendered by the judge or jury, he/she may appeal the case. Similarly, in a criminal case, the defendant may appeal if he/she believes the judge or jury's verdict was incorrect (Carp, Stidham & Manning 2007).

Cases appealed from the district court are heard by the appropriate United States Courts of Appeals. There are eleven courts of appeals throughout the country, with each spanning multiple states and/or territories (Murphy et. al. 2006). A twelfth circuit, known as the Federal Circuit, sits in Washington D.C. and hears appeals involving rules promulgated by federal agencies headquartered in D.C. and appeals from district courts regarding patent laws (Wilson 2012). The process of filling a judgeship on the courts of appeals is the same as that seen in district court confirmations. There are 179 judgeships on the court of appeals (United States Courts "Judges and Judgeships"). The boundaries and types of cases heard by the courts of appeals are determined by Congress. The 11 regional courts of appeals, hear all cases appealed within their jurisdiction. They have no discretion over which cases they review. In addition to cases appealed from district courts, the courts of appeals are also responsible for reviewing decisions made by administrative agencies within its jurisdiction (Carp, Stidham & Manning 2007).

The decision-making process for the courts of appeals is markedly different from that seen at the district court level. Most appealed cases are heard by a three-judge panel consisting of three judges from that circuit. The judges are assigned to these panels randomly, and are rotated frequently to prevent the same three judges from hearing multiple cases together. The litigants are given the opportunity to participate in oral arguments, where attorneys may present their respective arguments and take questions from the judges (Carp, Stidham & Manning 2007). The courts of appeals do not determine facts or examine evidence; rather, they merely review a case

to determine if errors of law were made by the lower court (Wilson 2012). Decisions are rendered based on a majority vote of the panel. In 2013, the U.S. Courts of Appeals received 56,453 appeals (United States Courts “Statistics” 2014). If a litigant is unhappy with the decision rendered by the court of appeals, he/she has the right to appeal the case to the Supreme Court.

The highest court in the federal judiciary, the Supreme Court of the United States, is the only federal court expressly required by the United States Constitution. It was created by the following phrase from Article III, Section 1, “The judicial Power of the United States, shall be vested in one supreme Court.” During Judge Taylor’s time on the bench (1949-1987), the Supreme Court was comprised of nine members (Susano 2009; Carp, Stidham & Manning 2007). There are eight associate justices and one Chief Justice. The position of Chief Justice is referenced in Article 1, Section 3, which states “When the President of the United States is tried, the Chief Justice shall preside.” The Chief Justice is commonly referred to as “the first among equals” because he/she has more responsibilities than an associate justice. The Chief oversees the Supreme Court’s operations/budget, and he/she plays a vital role in the decision making process in cases before the Court (discussed below) (Rutkus & Tong 2007, 5).

When a vacancy occurs on the Court, the president of the United States nominates an individual, and he/she follows the same process as a district court or court of appeals nominee. The United States Judiciary Committee examines the nominee and his/her background, votes on the nominee, and if approved, the full Senate determines whether or not he/she should be confirmed based on a “yes/no” vote (Lyles 1997). If confirmed, this individual is given a lifetime appointment to the Court and can only be removed by impeachment (U.S. Constitution, Article III, Section 2).

The Supreme Court has two types of jurisdiction: original and appellate. Under original jurisdiction, the Court may hear a case without it first being heard by a lower trial court (Carp, Stidham & Manning 2007). This power is granted in Article III, Section 2, and applies only in the following limited instances: “Cases affecting Ambassadors, other public ministers and Consuls and those in which a State shall be a Party.” The Court’s original jurisdiction was expanded by Congress to include cases involving suits between states, cases involving the United States and a particular state, and any litigation between a state and a citizen of a different state (28 U.S. Code § 1251). Only a few original jurisdiction cases are heard by the Supreme Court each year. The vast majority of the caseload comes from its appellate jurisdiction. Litigants who lose at a lower level (i.e. the district or courts of appeals) can request that the Supreme Court reexamine their case. Unlike the courts of appeals, the Supreme Court can determine which cases it hears. Four of the nine justices must agree to hear the case, a process known as granting a writ of certiorari. “Granting cert,” as it is commonly referred, orders the court which originally decided the case to send the court record to the Supreme Court for review. If the Court does not “grant cert,” the decision of the lower court stands. Parties may submit briefs, which contain explanations/arguments for why the Court should rule in their favor. The litigants appear before the Court during oral arguments, at which time the justices may ask them questions and discuss matters of law (Carp, Stidham & Manning 2007).

The Supreme Court typically hears cases during a two-week period, with justices meeting on Wednesdays and Fridays to discuss cases and take a preliminary vote. The side which has the most votes is the majority opinion, referred to as the opinion of the Court. If the Chief Justice is in the majority, he/she will assign the opinion writing to an associate justice. If the Chief is in the minority, then the most senior member in the majority is charged with assigning the opinion.

Each justice has the following three options: write/join the majority opinion, write/join a concurring opinion, or write/join a dissenting opinion. A concurring opinion is written when a justice agrees with the ruling of the majority, but disagrees with the rationale of the Court's opinion. A dissenting opinion is written when a justice disagrees with the opinion of the Court. While a justice is not required to write a dissent, most do if they are on the losing side. In this dissent, a justice provides his/her reasoning about the case and describes how he/she would have ruled had his/her opinion been the majority. A final option available to the Court is the issuance of a per curiam opinion. Under this option, the Court makes a ruling but it is an unsigned opinion, meaning that the vote breakdown of the justices is not made public. The Court usually only issues a per curiam opinion when it does not give full consideration to a case (i.e. does not hear oral arguments). If the Court affirms the ruling of the lower court, a final verdict has been rendered, and the parties have exhausted their appeals. If the Court reverses the lower court, the losing party becomes the winning party, and the ruling is final. Sometimes the Court will reverse a decision from a district court, and then remand the case back to that court for a new trial, consistent with the Court's opinion (Carp, Stidham & Manning 2007). Regardless of how the Court renders its opinion, whether it be a 9-0 decision, a 5-4 decision, or a per curiam decision, the ruling is final. Unless the case has been remanded, the losing party has exhausted his/her/its appeals and the judicial process ends.

In addition to the above courts, Congress has also created courts of limited jurisdiction. Some courts of limited jurisdiction are Article III courts, meaning that they are constitutional courts created by Congress, whose judges have the same protections as district court/court of appeals/Supreme Court members (i.e. life tenure and salary protections) (Carp, Stidham & Manning 2007). Examples of these courts are the following: U.S. Court of International Trade,

U.S. Court of Appeals for the Federal Circuit, U.S. Foreign Intelligence Surveillance Court, and U.S. Foreign Intelligence Surveillance Court of Review (Wilson 2012). The other type of limited jurisdiction courts are Article I, legislative courts. These judges do not have life tenure or salary protections, meaning that Congress determines their terms and can alter their pay (Carp, Stidham & Manning 2007). Examples of Article I courts include the following: U.S. Court of Federal Claims, U.S. Court of Appeals for Veterans Claims, U.S. Court of Appeals for the Armed Forces, U.S. Bankruptcy Courts, U.S. Tax Court, and the U.S. Alien Terrorist Removal Court (Wilson 2012). Like the name implies, these courts have narrowly tailored jurisdictions, which make them highly specialized and, therefore, the number of cases heard in these courts relative to the overall federal judiciary are fairly low (Carp, Stidham & Manning 2007).

FEDERAL COURTS AND TENNESSEE

A United States district court was established by Congress for the state of Tennessee on January 31, 1797. In 1802, the district was divided into an East Tennessee District and a West Tennessee district; however, a second judgeship was not created for the new district. A third district was created in Middle Tennessee in 1839, and still, a single judge served the entire state. In June 1878, Congress created a second judgeship, which exclusively served the Western District. The Middle and Eastern district courts continued to be served by one judge. In 1922, a third judgeship was created by Congress to oversee the Middle Tennessee district court. Congress created additional judgeships for the Eastern District in 1940, 1961, 1984, and 1990, bringing the total number of judgeships to five (Federal Judicial Center “History of the Federal Judiciary: Tennessee”; Brake 1998).

The Eastern district court stretches from far East Tennessee into Middle Tennessee, and is comprised of the following counties: Anderson, Bedford, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Coffee, Franklin, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Lincoln, Loudon, Marion, McMinn, Meigs, Monroe, Moore, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, and Washington. While the Eastern District is headquartered in Knoxville, it also has three other divisions: Chattanooga, Winchester, and Greenville (Federal Judicial Center “History of the Federal Judiciary: Tennessee”).

The Federal district courts in Tennessee fall within the jurisdiction of the United States Courts of Appeals for the Sixth Circuit. The judicial districts of Tennessee were assigned to the Sixth Circuit on July 15, 1862. In addition to Tennessee, the Sixth also hears appeals from Kentucky, Ohio, and Michigan. As with all district courts, cases heard in the Eastern District of

Tennessee can be appealed to the United States Supreme Court (Federal Judicial Center “History of the Federal Judiciary: Tennessee”).

III. LITERATURE REVIEW AND DEFINING INFLUENCE

Most literature on the federal judiciary examines the United States Supreme Court, and, to a lesser degree, the United States Courts of Appeals. This is unfortunate, because the United States District Courts are typically the final arbiters in most cases. United States District Judge Henry N. Graven, from the Northern District of Iowa, highlighted this point in the following statement: “The people of this district either get justice here with me or they don’t get it at all. I’ve had a number of cases appealed over the years, but I’ve never been overruled. [...] Here at the trial court—that’s where the action is” (Rowland & Carp 1996, 1). Since the United States District Courts play a vital role in the federal judiciary and American society, and are insufficiently studied relative to other courts, this paper will examine them in detail

As I stated at the beginning of this thesis, my contention is that Federal District Judge Robert L. Taylor is a prime example of an influential federal district court judge. In the pages that follow, I will present evidence to support this contention. Klein and Morrisroe (1999) define influence as the following: “the extent to which the actions of one person have an effect on the views or behavior of others” (372). Relative to this thesis, an influential judge is one who is able to alter/change the ideas and actions of his colleagues and/or the legal and lay community in his district (Klein & Morrisroe 1999). Various methods of measuring influence are discussed below.

One primary method of measuring influence is citation analysis (Klein & Morrisroe 1999; Landes, Lessig & Solimine 1998). When judges write opinions, it is a common practice to cite opinions of other judges on district and appellate courts. There are two types of citations: inside circuit and outside circuit. An inside circuit citation occurs when a judge references the opinion of another judge within his/her own circuit. For example, if a judge in the Middle District of Tennessee (in the Sixth Circuit) references a judge’s decision from the Eastern District of Michigan (also in the Sixth Circuit) that is an inside circuit citation. An outside circuit

citation is when a judge in the Sixth Circuit cites the decision of a judge in another circuit (Landes, Lessig & Solimine 1998). According to Landes, Lessig & Solimine (1998), inside circuit citations are primarily precedential, meaning that the decision merely highlights the precedent that exists within the circuit on a particular issue. Outside circuit citations do not have a precedential effect; rather, they are placed in an opinion to have a persuasive effect. For this reason, the authors argue that an outside circuit citation highlights greater influence than an inside circuit citation (Landes, Lessig & Solimine 1998). While these authors did a citation analysis of judges on the courts of appeals, a similar analysis is conducted in this work.

I believe that a judge's influence can extend beyond the impact of his/her decisions to include how he/she conducts his/her personal life. Although more difficult to measure, there are anecdotal factors which highlight a judge's influence, such as whether or not litigants comply with his/her decisions and the number of speeches he/she gives at legal events and community events in the district. A judge does not make his/her decisions in a vacuum. One who is active in his/her district and engages with the legal community is likely a more influential jurist. In the same vein is the concept of judicial ideology. My contention is that a judge who is not highly conservative or highly liberal will be a more influential jurist because he/she will not enter into a case with preconceived ideological notions about his/her ruling. This enables a judge to make decisions based solely on the law and the facts of the case, which will likely reduce the chances of his/her decision being overturned by an appellate court.

Another method of determining influence is by examining a federal judge's affirmation/reversal rate by the appellate courts (Choi, Gulati & Posner 2010; Weakland 1987). According to these authors, a judge with a high affirmation rate by the appellate courts has a better reputation, and thus is a more influential judge. A judge who is reversed less frequently

than the average will likely garner increased citations by his colleagues, both inside and outside his/her circuit (Choi, Gulati & Posner 2010). In addition, a judge with a high affirmation rate will likely provide justice to the people of his/her district sooner because the litigants do not have to go through an expensive, taxing reversal and remanded trial.

A final method of measuring influence is examining how a federal judge impacts his/her colleagues on the federal bench. Examples of this include the following: getting one's colleagues to adopt certain practices, being selected to serve on committees, being asked to speak at conferences, and being selected to sit on high-profile and/or difficult cases.

Data concerning Judge Taylor's life and career are detailed in the upcoming section. Judge Taylor's influence is evidenced by how frequently he was cited inside the Sixth Circuit and around the country, by his low reversal rate, by the impact of his decisions on his district, and by the impact of his personal and professional reputation on his judicial colleagues.

IV. DATA AND METHODS

My thesis question will be addressed using the case study method. Gerring (2004) defines a case study as “an intensive study of a single unit with an aim to generalize across a larger set of units” (341). Gerring further states that case studies are especially useful for researchers who are presenting “original research of some sort,” like in this work (345). Case studies enable the researcher to examine a subject in depth and “are more useful for forming descriptive inferences” (Gerring 2004). This method of study fits this work perfectly because I will examine the influence of one federal district judge, with hopes of seeing how his methods could be used to benefit the judiciary as a whole.

To demonstrate Judge Taylor’s influence, I examined a substantial number of his published opinions. During his time on the bench, Judge Taylor released approximately 700 published opinions. I compiled a list of these opinions, dating from 1949 to 1990, by searching Westlaw using Taylor’s first and last name. From this list I examined 350 of his cases, by working backwards from his last published case. These 350 cases covered the years 1984 to 1972. I examined each one, noting the type of case (i.e. criminal, public contract, government regulation, etc.); Taylor’s ruling; whether or not it was appealed; and, if appealed, if it was reversed or affirmed. I assigned a score to each case based on the ideological scoring system of Jonathan Patton (2008), who based his system on one created by Melinda Gann Hall and Paul Brace (2000). A case was given an ideological score of “1” if it was a liberal decision and a “0” if it was a conservative decision. For example, in a criminal case, if Judge Taylor ruled for the defendant (the alleged criminal), holding that a vehicle search was excessive, then that would be coded as a liberal decision. If Judge Taylor ruled for the prosecution (the state) and upheld the search as lawful, then the decision would be coded as a conservative decision. In civil suits, if the parties involved were of unequal standing (i.e. a small business vs. a large corporation), a ruling

for the smaller party was coded as a liberal decision and a ruling for the larger litigant was coded as a conservative decision.

Some cases were not assigned an ideology score. All bankruptcy cases, most cases involving diversity jurisdiction; and all private contract disputes, where neither party was substantially “larger” or “more powerful” (i.e. a suit between two corporations), were not coded.

The purpose of examining these cases was to determine Judge Taylor’s ideology on the bench. While this coding scheme is far from perfect, it is widely accepted within the political science community as a way to make a fairly accurate estimate of a judge’s overall ideology. In order to develop a more complete estimate of Taylor’s ideology, the ideological scores of the Sixth Circuit judges which heard his cases on appeal were collected from the work of Kuersten & Songer (2001). If Taylor was a conservative judge, we would expect his rulings to be reversed by liberal court of appeals judges and affirmed by conservative judges. If Taylor was a liberal judge, we would expect his rulings to be reversed by conservative appeals judges and affirmed by liberal judges. Similar to the ideology of the Sixth Circuit judges, ideological scores were collected for the Supreme Court Justices which were on the bench and heard cases appealed from Taylor’s court. The ideological scores used in this paper were collected from Target Point Consulting, which made an infographic based on ideology scores created by Andrew Martin and Kevin Quinn (2002).

The citation analysis was conducted for only one year of Taylor’s cases. I checked each case in Westlaw and determined the number of citations his cases received. It would have been ideal to examine citations throughout his entire career, but time constraints did not allow for this research. Data was collected regarding total citations during the year, and a subset of data was gathered concerning outside circuit citations.

My analysis of Judge Taylor's affirmance/reversal rate was conducted using a scheme created by Brian L. Weakland (1987). Under this system, a judge begins the year with 50 "points." If the judge's decision is affirmed on appeal, five points are added. If the judge's decision is reversed by the appellate courts, eight points are subtracted. Weakland (1987) argues that this analysis of affirmance/reversal rate can be used as a method to examine the effectiveness of judges throughout the nation. I applied Weakland's method (1987) to the appealed cases in the 350 cases examined in this study.

In addition to analyzing Judge Taylor's cases on Westlaw, I used primary source information in my work. Firstly, an examination was conducted of the Taylor Papers at the Howard Baker Center's Modern Political Archives at the University of Tennessee, Knoxville. These papers included his case notes, personal correspondences, newspaper clippings, and a plethora of other primary resources that provided a fuller, deeper understanding of Judge Taylor's career and personal life. Secondly, I conducted an interview with Judge Taylor's son, Robert L. Taylor Jr., in which I asked a variety of questions pertaining to his father's career and personal life.

The evidence and findings of my research are summarized in the next section. This information will show that Judge Taylor was an exceptionally influential jurist.

V. EVIDENCE AND FINDINGS

A. Career

In the summer of 1948, Robert Taylor managed the campaign of Gordon Browning in his race for the Democratic nomination for governor of Tennessee. Browning won the nomination, and Taylor was selected to serve as chairman of the Tennessee Democratic Party. In this capacity, Taylor oversaw the general election campaigns of Democrats Estes Kefauver in his race for the U.S. Senate and Browning in his race for governor (Susano 2009). The success of these campaigns increased Taylor's "profile" in political circles, which probably led to him being considered to fill the vacancy caused by the death of Eastern District Judge George C. Taylor (no relation). Judge Taylor was appointed to the United States District Court for East Tennessee by President Harry Truman on November 2, 1949. Because Congress had adjourned prior to his appointment, Judge Taylor assumed the bench under what is known as a recess appointment (Susano 2009). On February 7, 1950, Taylor's nomination was brought before the Judiciary Subcommittee of the United States Senate. According to the transcript from these proceedings, Judge Taylor's nomination was "highly recommended" by Senator Kenneth McKellar (D-TN), and Senator Estes Kefauver (D-TN) "okay[ed]" his nomination ("Nomination of Honorable Robert L. Taylor" 1950). Congressman John Jennings, Republican from Tennessee's Second Congressional District, also supported Taylor's nomination by writing a letter to the Judiciary Subcommittee. In this letter, he stated the following:

"Since his interim appointment [...] he has tried many lawsuits. The able and impartial manner in which he has discharged the duties has more than justified his appointment. He is courteous, patient, painstaking, and has incurred the confidence, respect and esteem of the members of the bar" (Jennings 1950).

In addition to the support from Tennessee's congressional delegation, Taylor received the support of the Bar Association of Tennessee. In a letter to the Judiciary Subcommittee, the Bar "urge[d] his confirmation" (Bar Association of Tennessee 1950). Judge Taylor's nomination was then heard by the full Judiciary Committee, and he was confirmed by the full United States senate on March 8, 1950. Judge Taylor was notified of his confirmation by a telegram from Senator McKellar (See Image 2) (Brake 1998; Telegram from Senator McKellar).

On two occasions, Judge Taylor was asked by United States Supreme Court Chief Justice Warren Burger to preside over difficult, high-profile cases in Maryland and Illinois. Judge Taylor met then-Assistant Attorney General Warren Burger in 1953. A strike was taking place at Oak Ridge National Laboratories, and per the Taft-Hartley Act, the president of the United States can sign an application for an injunction to end the strike. General Burger delivered the signed application from President Eisenhower to Judge Taylor, who signed an injunction ending the strike that night (Burger 1987). They maintained a relationship from that point forward, and in 1973, Justice Burger asked Taylor to preside over the trial of Otto Kerner, a sitting judge for the Seventh Circuit Court of Appeals. Judge Kerner was charged with bribery related to a race track, which took place during his tenure as governor of Illinois (Susano 2009; *U.S. v. Isaacs*). Described by Taylor as "the most difficult act of his career," he sentenced the judge to three years in prison, making Kerner "the first federal appellate judge ever convicted of a felony" (Tybor 1973). In 1977, Chief Justice Burger once again called upon Judge Taylor to preside over the criminal case of sitting governor of Maryland, Marvin Mandel (Susano 2009; *U.S. v. Mandel*).

In addition to keeping his caseload current, Judge Taylor assisted other courts that were struggling to keep their dockets current (Susano 2009). In 1969, Judge Taylor temporarily sat on

the Sixth Circuit Court of Appeals in Cincinnati during the week of October 16th (Warner 1969). In 1976, Judge Taylor presided over a series of cases in the Southern District of New York, which was struggling under a burgeoning docket (Taylor 1965).

An examination of other aspects of Taylor's career further highlights his influence.

B. Influence

1. Caseload

When Judge Taylor assumed the bench in 1949, the docket of the Eastern District was significantly backlogged, due primarily to the ailing health of Taylor's predecessor, Judge George Caldwell Taylor (Brake 1998). In addition to the poor health of Judge George Taylor, the Eastern District's caseload had been steadily increasing due to the growth and industrialization of East Tennessee, specifically in the Knoxville area. The growth of the federal government in the Knoxville area was a result of the Great Depression of the 1930s. During this time period, the Tennessee Valley Authority (TVA) was created, the laboratories at Oak Ridge became a vital part of the nation's atomic energy industry, and the University of Tennessee at Knoxville (UTK) underwent significant expansion (MacArthur 1978). Each of these factors combined to substantially increase the volume of cases heard by the Eastern District court.

Even with Judge Taylor working "long days and evenings," it wasn't until 1954 that the court's docket became current (Susano 2009, xi). Once this remarkable feat was accomplished, Judge Taylor never looked back. One attorney who appeared in Judge Taylor's court, Bruce T. Hill, stated that Taylor "gave new meaning to the Speedy Trial Act" (Susano 2009, 134).

According to an undated article written by Sandra Clark, a trial in the Eastern District of Tennessee (which included Taylor's docket and the dockets of three other district judges) took almost 4 months to commence after a defendant submitted his/her/its response to charges.

Although Taylor had "one of the top five caseloads in the entire United States," on average, a

trial began within 3.4 months in Taylor's court (Clark). In other words, litigants would have their cases resolved several weeks faster in Taylor's court than in any other court in the Eastern District.

Judge Taylor commented that his ability to keep his docket current actually led to an expansion of his caseload in the long term. In a speech in Johnson City on May 7, 1955, Taylor stated the following: "If he's an efficient and hard-working judge, his reputation gets around and it isn't long before two cases are being filed for every one disposed of" (Taylor 1955). Through an unwavering dedication to the people of East Tennessee, Judge Taylor was able to overcome his continually expanding docket in order to ensure the fair and efficient distribution of justice in his district.

2. Impact on the Eastern District

During his 38 years on the bench, Judge Taylor heard cases of vital importance to East Tennessee. Of these cases, the following four categories of litigation are worth examining: desegregation, gender rights, the Tennessee Valley Authority, and the University of Tennessee.

A. Desegregation

In 1952, Judge Taylor presided over *McSwain v. County Board of Education of Anderson County, Tennessee*, which addressed the question of whether or not the public schools in that county should be desegregated. The existing precedent at the time of this case regarding the segregation of public schools came from an 1896 case styled *Plessy v. Ferguson*. In *Plessy*, the Supreme Court held that separate public facilities for African Americans and Caucasians were acceptable, provided that the accommodations were equal, giving rise to the standard "separate, but equal." Using the precedent provided by *Plessy*, Judge Taylor ruled against the plaintiffs, arguing that the school for blacks was of equal quality to the school for whites, as were the

school buses. In his opinion, Taylor observed that “when the student plaintiffs sought admission to Clinton High School, which is a school for white children, the defendants were in effect asked to violate the constitution and the statutes of Tennessee, for admitting the Negro students would have amounted to that” (*McSwain*). The segregation of Anderson County schools continued until 1955.

The era of segregation ended on May 17, 1954, when the Supreme Court established a new precedent in *Brown, et al. v. Board of Education*. In *Brown*, the Court held that the practice of “separate but equal” public facilities was unconstitutional. In September 1955, and in light of the Supreme Court’s landmark decision, Judge Taylor issued an order against the Anderson County School Board, ruling that the practice of school segregation must end “with all deliberate speed as required by the decision of the Supreme Court” (qtd. in Brake 1998, 108).

Many people in East Tennessee staunchly opposed the desegregation of public schools. One of the most ardent opponents was John Kasper, who was in charge of Seaboard White Citizens’ Council (based in Washington DC). Casper and supporters came to East Tennessee to lead the charge against desegregation (Brake 1998). On August 29, 1956, Judge Taylor issued a temporary restraining order which prohibited any action that prevented the process of integration. Kasper ignored Taylor’s order and continued to organize protests. In response, Judge Taylor used what is described as “one of the oldest judicial weapons”—the contempt power (Murphy et. al. 2006, 306). Taylor found Kasper in contempt and sentenced him to one year in prison for his obstruction of the school desegregation process (Brake 1998).

The overall process of desegregation in Anderson County, begun by Judge Taylor’s order, was remarkably quick and lacked many hallmarks of desegregation in other states. For example, President Dwight Eisenhower had to deploy the Arkansas National Guard to ensure the

desegregation of schools in Little Rock, Arkansas (Anderson 2010; Walker 2009). It would be unwarranted to argue that if Judge Taylor was the district judge in Little Rock, that situation would not have occurred; however, I believe it is worthy to note that when he told the schools to desegregate, they did so, and he did not need the National Guard to make it happen. By jailing Kasper, Judge Taylor showed the people of the Eastern District that he would use any legal means within his power to enforce his rulings.

This experience elevated Judge Taylor to the national stage. He received letters criticizing his decision from states as far away as Delaware and California. For example, WS. Curry, from Itta Bena, Mississippi, wrote the following: “I am sure your masters in Washington surely love and admire you, because you have done just as they would have you do with Mr. Kasper. Judge, you can rest assure of one thing, the white people of our Country do not admire your actions” (Curry 1956). Judge Taylor received a similar influx of letters commending him for his “moral courage” (Morrison 1956), and he was described in the *New York Times* as “act[ing] with promptness” to end segregation (“Lawlessness Solves Nothing” 1956). After schools were desegregated and the issue dissipated, Judge Taylor was asked by the media how this case impacted him. Taylor commented that it was one of the more difficult times of his life, and he lost many friends and acquaintances as a result of his decision (Taylor Jr. 2014).

B. Gender Rights

On September 7, 1968, a group of women known as the New York Radical Women conducted an entire day of protests in Atlantic City, New Jersey against the Miss America Beauty Pageant, American involvement in Vietnam, and other issues pertaining to women’s rights. This event sparked what would come to be known as the women’s liberation movement. This movement experienced rapid growth and expansion, and the 1970s “marked the heyday of

women's liberation" (Berkeley 1999, 5). During this decade, liberation advocates lobbied for improvements to domestic violence laws, the passage of laws pertaining to child-care and homemaker rights, and the elimination of restrictive abortion laws (Berkeley 1999). The movement to expand the rights of women was not delegated to the liberal strongholds of the east coast and west coast. East Tennessee experienced its own version of this movement, which culminated in a case before Judge Taylor's court.

In November 1976, Judge Taylor ruled on the case of *Victoria Ann Cape v. Tennessee Secondary School Athletic Association*. Victoria Cape was a junior on the women's basketball team at Oak Ridge High School. According to rules adopted by the Tennessee Secondary Athletic Association (TSSAA), high school women could only play six-player (three forwards and three guards), half-court basketball. These requirements stood in sharp contrast to the five-on-five, full-court basketball that high school men played. Tennessee was only one of six states in the country to maintain six-player rules for women's high school basketball. Cape sued the TSSAA, alleging that the more restrictive rules for women violated her equal protection rights guaranteed by the Fourteenth Amendment and her rights established by Title IX of the 1972 Education Amendments. These rules were a violation because they made it less likely that she would receive a college scholarship. One witness for Cape, Patricia Sue Ann Head (better known as Pat Head Summit), was the head coach of UT women's basketball. Head testified that women's basketball at the college level was played with five players, and women who played six-player high school basketball would start out at a disadvantage. Stuart Aberdeen, a coach on the UT men's basketball team, also testified for Cape by describing the transition from six-player to five-player basketball as learning how to drive a car in a cemetery, then getting on a busy roadway (Brake 1998, 154). TSSAA argued that these rules were not a violation because they

made the game more exciting and did not prevent female athletes from acquiring scholarships (Brake 1998).

This case received substantial media coverage. Randy Moore, in the *Knoxville Journal*, wrote the following about the case: “Tennessee’s most important girls’ basketball contest of the year won’t be settled on a court, but in one” (qtd. in Brake 1998, 155). After hearing the arguments from both sides and examining the evidence, Judge Taylor ruled in favor of Cape, holding that the TSSAA rules violated the Equal Protection Clause of the Fourteenth Amendment. Judge Taylor did not issue an injunction forcing the TSSAA to comply because he hoped they would adhere to his ruling without it. The TSSAA disregarded his ruling, which led Taylor to issue an injunction against it on December 27, 1976. The TSSAA appealed to the Sixth Circuit Court, and in October of 1977 reversed Judge Taylor’s decision, holding that the six-player, half-court rules did not constitute discrimination (Brake 1998). Judge Taylor was frustrated by the Sixth Circuit’s reversal. Taylor gave the commencement speech at the University of Tennessee in 1978. In his speech, he discussed the *Cape* case at length, saying that his decision was reversed “by a misguided appeals court” (Taylor 1978). Although the Sixth’s reversal meant that restrictive rules for women remained in effect, it was short lived. In late 1979, the TSSAA approved five-player, full-court play for women’s high school basketball (Brake 1998).

C. Tennessee Valley Authority

One of the most prolific litigants before Judge Taylor’s court was the Tennessee Valley Authority (TVA). On the whole, Judge Taylor was known for “tend[ing] to favor the TVA” (Quinlan). The most important case was the result of a series of litigation pertaining to the construction of the Tellico Dam. After this project was approved by Congress in October of

1966, the TVA began land acquisition in the late 1960s/early 1970s. The TVA acquired approximately 38,000 acres for the project, using its eminent domain powers against farmers and landowners who were initially unwilling to sell. Opponents of the Tellico Dam were fairly weak relative to the TVA, and had almost no statutory grounds on which to initiate litigation until Congress passed the National Environmental Policy Act (NEPA) of 1970 and the Endangered Species Act (ESA) of 1973 (Murchison 2007). In 1972, opponents of the project requested an injunction because the TVA did not complete an environmental impact statement required by the NEPA. The TVA argued that, since the NEPA became law in 1969, three years after the project was approved, they were not required to complete the statement. Judge Taylor agreed with the plaintiffs that a statement must be prepared, and he issued an injunction halting the construction. The Sixth Circuit upheld Taylor's decision, and the injunction remained in effect until October 25, 1973. On that date, Judge Taylor removed his injunction because the TVA submitted the impact statement required by the NEPA, and construction of the dam resumed (Brake 1998).

The project continued unabated until 1975. In August 1973, fish called *Percina tanasi* (snail darters) were discovered in the area around the Tellico project. The United States Fish and Wildlife Service deemed the snail darter an endangered species protected under the ESA. Opponents of the Tellico Dam once again took the TVA to court, alleging that the continued construction of the dam would drive the snail darter into extinction (Plater 2013). On May 24, 1976, in *Hill v. Tennessee Valley Authority*, Judge Taylor ruled that the dam did endanger the existence of the snail darter; however, the dam was so near completion that the ESA could not preclude it from being finished. The opponents of the project appealed to the Sixth Circuit, who overturned Taylor's decision. The Sixth Circuit held that only the Secretary of the Interior can exempt the Tellico Dam project from having to comply with the ESA (not Judge Taylor), and

that considerations regarding the degree of completion were irrelevant. The case was appealed to the United States Supreme Court, who, in a 6-3 decision, affirmed the Sixth Circuit's decision.

The TVA ran out of options with the judicial branch (Plater 2013).

Most politicians in Tennessee supported the completion of the dam. Senator Howard Baker, with the support of Congressman Albert Gore Jr., Congressman John Duncan, and Senator Jim Sasser, was one of the leading proponents of the dam. Baker led the effort in Congress to pass an amendment to the ESA which would exempt the Tellico Dam project from its requirements. After much political wrangling, Baker and his colleagues were able to get their amendment passed in September 1979 (Brake 1998).

Although Judge Taylor's decision was overruled by the appellate courts, the outcome that he had initiated (i.e. completion of the dam) came to fruition in late 1979 (Murchison 2007).

D. University of Tennessee

Another frequent litigant in Judge Taylor's courtroom was the University of Tennessee (UT). Aside from Judge Taylor's ruling regarding desegregation of the UT law school, he also heard several cases pertaining to the termination of UT employees (see *Soni v. Board of Trustees of the University of Tennessee*), employment discrimination at UT (see *Van DeVate v. Boling* and *Calage v. University of Tennessee*), and student tuition (see *Hooban v. Boling*); however, one of the most important cases dealt with students' rights.

In 1969, a case came before Taylor's court styled *Jim Smith et. al. v. University of Tennessee et. al.* At this time, the Issues Committee was a student organization at UT with a budget of \$12,000. This committee selected and paid speakers to give lectures/speeches on campus throughout the school year. Their selections were subject to restrictions listed in the student handbook. These guidelines stated the following: 1) "the speaker's competence and topic

shall be relevant to the approved constitutional purpose of the organization [i.e. UT]”; 2) “there is no reason to believe that the speaker intends to present a personal defense against alleged misconduct or crime”; and 3) “there is no reason to believe that he might speak in a libelous, scurrilous or defamatory manner or in violation of public laws” (qtd. in *Smith v. UT*). The student handbook also charged a Faculty Committee to “consider whether the invitation and its timing are in the best interest of the University” (qtd. in *Smith v. UT*).

The Issues Committee sought to invite Dick Gregory, an African-American civil rights advocate, to speak in 1968. The Issues committee’s request for approval was denied by UT Chancellor Charles Weaver on September 10, 1968. In 1969, the Issues Committee sought to invite Dr. Timothy Leary, who advocated for the use of the drug LSD, to campus. On February 3, 1969, the Committee’s request for approval was denied by the chancellor. According to Theodore Brown, who was a student at UT and member of the Student Government Association at the time, the frustration felt by the student body was palpable. After the request for Leary to speak was denied, a group of approximately 200 students marched to the University’s administration building. When Chancellor Weaver refused to speak with student representatives, a small-scale riot broke out, and students threw bricks and rocks at the building and members of the administration (Brown 2014).

Frustrated by the continuing lack of cooperation from administration, a group of students filed suit in federal district court, alleging that the guidelines set forth by the administration regarding the invitation of speakers were “unconditionally broad and vague,” which constituted a violation of the First and Fourteenth Amendments. Judge Taylor agreed, finding the rules to be so broad that the administration could “act as an unrestrained censor of the expression of ideas with which he does not agree” (*Smith v. UT*). In issuing his opinion, Taylor relied on a Supreme

Court case styled *Tinker v. Des Moines* issued earlier that year, which supported a fairly broad understanding of student rights. Similar to his ruling in *Cape v. TSSAA*, Judge Taylor did not issue an injunction compelling the school to alter its speaker policy because he believed the school would willingly comply with his decision (*Smith v. UT*).

After Judge Taylor issued his ruling, the administration, including Chancellor Weaver, reworked the rules regarding the invitation of speakers. The administration adopted “an open speaker policy,” which gave greater deference to student group invitations, a policy which is still in place today (Boehnke 2014; Brown 2014).

3. Impact on Judiciary

Another area that highlights Judge Taylor’s influence was his impact on the federal judiciary, specifically his work with the Judicial Conference of the Sixth Circuit. This judicial conference is comprised of all circuit and district judges, as well as all bankruptcy and magistrate judges within a given appellate jurisdiction. The conference meets every even numbered year, and members use this forum to discuss legal issues, address administrative matters, and listen to speeches on various topics (U.S. Court of Appeals for the Sixth Circuit, 2014). During his time on the bench, Judge Taylor sat on the following Sixth Circuit Judicial Conference committees: the Committee on Trial Practice and Technique, the Speedy Trial Act Planning Group, and the Committee on Pre-Trial Procedure. The overarching theme of Taylor’s work on each committee was improving the federal judiciary’s ability to handle its docket quickly and efficiently, thus achieving justice in a larger number of cases.

A. Committee on Pre-Trial Procedure

Judge Taylor was a strong proponent of using pre-trial conferences to keep his docket current. Pre-trial conferences are fairly informal, usually taking place in the judge’s chambers and off the official court record (Carp, Stidham & Manning 2007). The parties present are the

judge and opposing attorneys. Pre-trial conferences have their origins in Roman law and English Common Law, and were first implemented in the US by Judge Ira Payne in 1926 (Taylor 1953). Pre-trial conferences most commonly occur during civil trials, but are also used in criminal cases, and serve the following purposes: advancing settlement negotiations, forming stipulations (i.e. “agree[ing] on uncontested factual issues”), and exchanging witness lists and other discovery items (Carp, Stidham & Manning 2007, 280). Judge Taylor used his time on the Committee on Pre-Trial Procedure to promote using these conferences within the Sixth Circuit.

When Taylor joined this committee in the early 1950s, pre-trial conferences were rarely used in federal district courts in the south. A 1950 report from the ABA’s Judicial Administration Section revealed that pre-trial conferences were far from common in the district courts of the southern states. For example, Alabama, Georgia, Mississippi, West Virginia, and South Carolina were either categorized as not using pre-trial conferences at all, or only rarely. Tennessee used these conferences somewhat more frequently, with “a few individual judges [using them] in certain types of cases” (ABA 1950). Judge Taylor had his own approach to these conferences. While most judges held them in their chambers, Taylor held conferences in the courtroom because it helped the parties stay more focused on the task at hand. In other words, the parties (himself included) were less likely to engage in “small talk” or discuss personal issues in open court (Taylor 1953). At a speech before the Regional Meeting of the Tennessee Bar Association, Taylor emphasized the importance of using pre-trial conferences as a way to cope with expanding caseloads in the courts. Taylor said, “If courts are to continue to retain the respect of the public, ways must be found for expediting the course of litigation” (Taylor 1953).

In 1956, Taylor sent a survey to the other federal district judges in the Sixth Circuit to assess their use of, and feelings toward, pre-trial conferences. The survey asked the following

questions: “1) How many civil cases have you pre-tried? 2) How many criminal cases have you pre-tried? 3) What types of cases do you use pre-trial most? 4) What are the benefits of pre-trial? and 5) What are the limitations of pre-trial?” (Taylor, “Use of Pre-trial: Judges of the Sixth Circuit”). The majority of responses stated that the judges did not use pre-trial conferences in either civil or criminal matters. The respondents said that these conferences were good because they narrowed the scope of the trial, developed stipulations, and reduced overall trial costs. However, most of their comments emphasized that these conferences were often a poor use of time because the attorneys did not come prepared and were reluctant to disclose information, witness lists, etc. (Taylor, “Use of Pre-trial: Judges of the Sixth Circuit”). Judge Taylor was one of the most prolific users of pre-trial conferences, employing them in 130 cases in 1956 and 106 cases in 1957 (“Pretrial by Judge for the First Three Quarters of the Fiscal Years 1956 and 1957”).

During the later years of the 1950s and through the mid-1960s, Judge Taylor devoted significant amounts of time and effort to advocate for using pre-trial conferences. Judge Taylor encouraged his colleagues to adopt their use at meetings of the Sixth Circuit and via personal correspondences (Taylor 1963, Young 1966). He advised his colleagues on the best/most-effective ways to conduct a pre-trial conference, emphasizing that the judge sets the agenda and “must be enthusiastic about the procedure and try to convince the members of his bar that it is an effective instrument in procedural law” (Taylor 1963). He also advocated for its use in state courts at gatherings of the state bar association (Taylor 1957). Similar to his 1956 survey, Taylor distributed a survey to his colleagues in the Sixth Circuit in 1966. This survey revealed that pre-trial conferences had become more widely used in the circuit, especially among younger judges (Taylor 1967). Similarly, Taylor’s efforts seemed to be taking hold at the state level, as several

of the state courts in Knoxville adopted pre-trial conferences (Taylor 1964). The expansion of pre-trial conferences cannot be attributed solely to the efforts of Judge Taylor; however, he played a vital role in their widespread implementation.

B. Committee on Trial Practice and Technique

Judge Taylor used his position on the Committee on Trial Practice and Technique to advance his advocacy of pre-trial conferences. While on this committee, Taylor and his colleagues created a handbook which provided judges with sample orders pertaining to pre-trial conferences and listed suggested procedures for these conferences (Taylor 1966). Taylor also advocated for increased trial preparation for law school students. He advanced a trial apprenticeship program for recent law school graduates so they could practice trial procedures in an actual courtroom before practicing on their own. Lastly, Judge Taylor also emphasized the importance of using taxpayers' dollars wisely, especially when it came to juror expenses. One important way that a judge could save money was by starting court on time and demanding that all parties be on time. While giving a speech at a seminar, Taylor emphasized this point with the following statement: "If one party is five minutes late, and fourteen jurors are empaneled, this means that 75 minutes is lost" (Taylor "Orientation and Utilization of Jurors"). William R. Banks, an attorney who practiced before Judge Taylor, experienced the judge's conscientiousness of time first-hand. During a civil trial, Banks asked the judge for a temporary recess because his next witness had not arrived. Judge Taylor responded with the following: "Mr. Banks, this court waits on no one—not even you! Get that witness in this courtroom now and put him on the stand or he will not be a witness in this case!" (Susano 2009, 104-105). Judge Taylor held himself to a high standard and demanded that his colleagues and the attorneys who practiced before him do the same.

A. Speedy Trial Act Planning Group

The Speedy Trial Act was passed by Congress in 1974 and established statutory restrictions on when a trial must begin. Congress required that a trial must begin within 100 days of a criminal case being filed, or the case will be dismissed. In response, the Sixth Circuit established a committee to formulate a plan for implementing this act (Carp, Stidham, & Manning 2007). Judge Taylor became a member of the Speedy Trial Act Planning Group in 1975. While on this committee, Taylor and his colleagues formed a plan of implementation which called for the following: punishing attorneys who failed to meet deadlines, setting a trial date at the time of arraignment, and moving criminal (and especially juvenile) cases to the front of the docket (Taylor “Interim Plan”). Membership on this committee enabled Taylor to advance many of his own practices, including his pre-trial techniques, which helped to increase efficiency throughout the Sixth Circuit.

In addition to these committees, Taylor was also elected as district judge representative of the Sixth Circuit to the Judicial Conference of the United States in 1972. The following year, he was appointed to the Executive Committee of the US Judicial Conference (Unidentified Biographical Sketch). In addition to serving on these various committees, Judge Taylor also impacted the judiciary through his decisions, specifically through citations of his decisions, which will be discussed in the next section.

4. Citations

During 1976, Judge Taylor issued 28 published opinions. These cases included suits involving government regulations, labor disputes, personal injury claims, and criminal cases. Judge Taylor’s decisions in these cases have been cited a total of 74 times. According to the research conducted by Landes, Lessig and Solimine in 1998, the average Court of Appeals judge

was cited a total of 193 times per year. A judge on the Court of Appeals sets a precedent in his/her ruling which impacts dozens of district courts within the Circuit. Therefore, it is truly remarkable that Judge Taylor was cited 74 times in one year, meaning that he was cited 38% as often as a judge who sits on a Court of Appeals. Landes, Lessig, and Solimine also discovered that a Court of Appeals judge was cited outside of the circuit about 70 times per year. My research reveals that Taylor was cited 48 times by judges outside the Sixth Circuit. This means that Judge Taylor was cited outside of circuit 68% as often as a Court of Appeals judge. As stated in the literature review section, an out-of-circuit citation is considered a sign of greater influence because it is being used exclusively for persuasive purposes (Landes, Lessig, & Solimine, 1998; Choi, Gulati, & Posner 2010). One case of note is *US v. Grant*, a criminal case, which was cited as recently as February 2014 in *U.S. v. Bert*, a case in the Eastern District Court of New York. This case alone highlights Judge Taylor's lasting impact on the bench. The frequency with which Judge Taylor was cited inside the Sixth Circuit and throughout the country is a prime example of his influence on the bench.

5. Ideology

Although Judge Taylor was an ardent Democrat, he was not an ideologue on the bench. As discussed earlier in this work, Judge Taylor was active in the Democratic Party prior to assuming the bench (Susano 2009). At a speech before a gathering of Democrats, Taylor described the Democratic Party as “the Party which has brought more good to more people in the past sixteen years than any other Party” (Unidentified Speech by Taylor at Democratic Party Meeting). According to Judge Taylor's son, Robert Taylor Jr., Judge Taylor's political involvement ended after he assumed the bench (Taylor Jr. 2013). Oftentimes, judges will wait to retire until a member of their party is elected President of the United States, virtually guaranteeing that their replacement will be of the same party. When asked if he was delaying

retirement until a democrat became president, Judge Taylor responded, “If I’d been going to retire I would have done it earlier, no matter who the president was. I wasn’t waiting on a democrat” (Unidentified Article).

My contention is that a moderate judge is more influential than a judge who is a staunch liberal or conservative, because he/she will be less likely to approach a case with biases that will lead him/her to rule a certain way. An analysis of Taylor’s ideology score from year to year is listed in Table 1. This data reveals that his most conservative year was 1981, with a 0.33, and his most liberal year was in 1976, with a 0.61. When one looks at his overall average, however, Judge Taylor’s ideology is a 0.497, which is almost midway between liberal and conservative.

The ideological scores of appellate judges who ruled in cases appealed from Taylor’s court were also examined. If the ideology scores of judges who tended to reverse Taylor’s decisions were conservative, then that would support the conception that Judge Taylor was a liberal judge. If the opposite was found, then we would more likely see Taylor as a conservative jurist. The following Sixth Circuit Court of Appeals judges heard cases appealed from Taylor’s court: Leroy Contie, Frederick Lively, Albert Engel, Anthony Celebreze, Robert Krupansky, Boyce Martin Jr., Damon Keith, Nathaniel Jones, Eugene Siler, Bailey Brown, George Edwards, Harry Wellford, Gilbert Merritt, Cornelia Kennedy, Harry Phillips, Paul Weick, John Peck, Wade McCree, Thomas McAllister, Clifford O’Sullivan, and Lester Cecil. In the case of *US v. Isaacs* (the federal appeals judge case), the Court of Appeals judges that heard the case were Harvey Johnsen of the Eighth Circuit, Joseph Lumbard of the Second Circuit, and Jean Breitenstein of the Tenth Circuit. The data gleaned from this examination is listed in Table 3. The average ideology of a judge reversing Judge Taylor’s ruling was 0.47, indicating a marginally conservative appellate judge ideology. Interestingly, the average ideology of a judge

affirming Judge Taylor's ruling was a 0.47 (Kuersten & Songer 2001). This data shows that Judge Taylor's decisions were likely fairly moderate because they did not draw reversals from conservative or liberal appellate court judges disproportionately.

A similar finding is seen in the two instances where Taylor's rulings were heard by the Supreme Court. In the first, *Hill v. TVA* (1978), a marginally conservative Supreme Court ruled against Judge Taylor's decision (Martin & Quinn 2002). In the second case, *Neal v. Bergland* (1981), a more moderate, but still marginally conservative, Court reversed Taylor's ruling (Martin & Quinn 2002). While this data might lead one to argue that Taylor was moderately liberal (because he was reversed by a marginally conservative Court), that assumption is ill-founded. Such a generalization cannot be drawn from a sample of two cases, and once the findings of my other analyses are considered, the evidence from the Supreme Court's ideology numbers further supports the argument that Taylor was a moderate judge.

While an ideology score of 0.497 by no means proves that Taylor approached cases without an ideological bias towards one party or the other, it supports the contention that he was a moderate jurist. Similarly, the finding that Taylor was not affirmed/reversed substantially by one ideology over the other at either the Court of Appeals or Supreme Court lends credence to this conclusion.

TABLE 1

Year	Ideology Score (0=Conservative, 1=Liberal)
1983	0.50
1982	0.58
1981	0.33
1980	0.46
1979	0.44
1978	0.34
1977	0.59
1976	0.61
1975	0.53
1974	0.48

1973	0.64
Average	0.497

TABLE 2

Appellate Decision	Ideology Score (0=Conservative, 1=Liberal)
Affirmed	0.47
Reversed	0.47

6. Reversal/Affirmation Rate

A low reversal rate (and therefore a high affirmance rate) is a mark of an influential judge. If a case is reversed by an appellate court, it is oftentimes remanded to the district court, meaning that a new trial will take place (Carp, Stidham, & Manning 2007). A reversal thus delays the final verdict, adds expense to the parties involved in the litigation, and delays justice. The data in Table 3 reveals that Taylor's highest score (i.e. his year of the fewest reversals) was 1973, where he had a score of 80. His worst year for reversals came in 1977, when he had a score of only 37. To put these numbers in perspective, the 1987 study by Weakland, whose method was used to determine the data below, shows that Taylor's numbers are far superior to his colleagues in the Sixth Circuit. The average rating for all federal district judges in the Sixth Circuit in 1987 was 38, over 20 points lower than the average rating for Judge Taylor. In addition, the least reversed judge, Horace Gilmore from the Eastern District of Michigan, had a score of 74 for that year, 6 points below Taylor's highest year of affirmances (Weakland 1987).

This data shows that Judge Taylor was reversed at a lower rate than most of his counterparts. This means that the litigants in Taylor's court received speedier resolution because they did not have to deal with the expense and anguish of a new trial because their case was remanded by the appellate court.

TABLE 3

Year	Reversal/Affirmation Score
1984	60
1983	53
1982	46
1981	54
1980	77
1979	72
1978	46
1977	36
1976	49
1975	72
1974	76
1973	80
1972	52
Average	59.5

C. Practices

Each of the above factors plays a vital role in showing Judge Taylor's influence on the bench. Even though he inherited an overflowing docket, Taylor was able to use his skills and abilities to get it current and keep it current throughout his career. This enabled him to hear more cases and thus provide speedier justice to the people of the Eastern District. Similarly, Judge Taylor ruled on an exceptional number of high-profile cases. From desegregation to women's rights, and government regulations to student speech, Taylor issued rulings which transformed the Eastern District and impacted the judiciary as a whole. His influence on the federal courts is evidenced by the number of times Taylor was cited by his colleagues in the Sixth Circuit and in other circuits. The fact that Judge Taylor was not an ideologue on the bench further contributed to his influence and effectiveness as a federal district judge. As a moderate jurist, Taylor was able to approach each case with an eye to justice rather than focusing on supporting a particular ideology. Lastly, Taylor's influence as a judge is further highlighted by his lower than average reversal rate. Since his decisions were overturned less often than his colleagues, the litigants in

Taylor's cases were able to achieve resolution in their case quicker than they would have in other courts. The litigants in Taylor's court typically did not have to undergo the expense and emotional turmoil of a remanded trial.

Judge Taylor's use of pre-trial conferences enabled him to handle cases quickly and efficiently, which furthered his influence on the bench. In the *McSwain v. County Board of Education of Anderson County* case, for example, through the use of pre-trial conferences, Taylor began the case with 57 stipulations from the parties. In the court transcripts of this case, Taylor commended the parties for reaching this significant number because it would "narrow the issues and shorten the proof materially," thus enabling him to render a verdict more quickly (*McSwain* Transcript 1952). Judge Taylor took his personal knowledge of these conferences, and skills he perfected over the years, and shared it with his colleagues on the bench. His advocacy of pre-trial conferences enabled litigants throughout the district to achieve swift justice by reducing the amount of time from filing to verdict.

Lastly, Taylor's overall judicial philosophy laid the groundwork for him to have an exceptionally influential tenure. After examining Taylor's career, reading his opinions, and analyzing his comments to the media and other members of the legal community, it became abundantly clear that he belonged to a school of judicial thought known as legal realism. This school of thought originated from Yale and Columbia law schools, and became prominent in the 1920s (Fliter & Hoff 2012). It holds that judges make a ruling "not primarily because of law, but based on their sense of what would be 'fair' [based] on the facts of the case" (Leiter 2005, 50). In other words, a realist judge would not see the law as providing a "one size fits all" solution for all cases. Instead, it is the responsibility of a judge to examine the facts of each case to reach an equitable outcome. A key point that must be made here is that a realist judge looks at *all* facts of

the case, even those that are not *legally* pertinent (Leiter 2005). This approach stands in sharp contrast to the legal formalist school of thought, which holds that the one and only guiding force behind a judge's decision should be the text of the law. This philosophy is also described as "mechanical jurisprudence" because its proponents believe that the law proscribes a certain outcome in all cases, regardless of what is fair or unfair.

The conception of Judge Taylor being a legal realist is supported by the writings of his former clerk, Bruce Ledewitz (1987), who wrote that, "Taylor tended to decide what the proper outcome of a case would be from hearing or reading the facts. He wanted his law clerks to bring the law to him to see whether the law allowed him to do what he felt he ought to do" (2). This approach to the law is emblematic of the realist approach. By ruling on cases in this manner, Taylor was able to ensure that the litigants in his court received justice based on the case facts, rather than on strict precedents and rigid legal concepts. Judge Taylor's ability to determine the most just outcome in a case endeared him to many in the legal and layman communities of East Tennessee, which furthered his influence on the bench.

D. Personal Life

This paper would be remiss if it failed to address Judge Taylor's life outside the courtroom. While examining the Taylor Papers at the Baker Center Archives, one aspect that struck me was how voluminous Judge Taylor's personal correspondences were. It was clear that Judge Taylor was well known and well liked within the East Tennessee community and around the nation as a whole. Taylor was highly involved with his alma mater, Milligan College. He was elected to its Board of Directors in 1936, where he served for over fifty years, and was a frequent donor to the college, giving \$1,500.00 in 1967 (Walker 1967; Walker 1963; McCormick 1980; Milligan Alumni Endowment Fund 1955). Judge Taylor also served as President of the

Tennessee Society of the Sons of the Revolution, was a member of the American Legion and the Cherokee Country Club, and was selected to serve on the Knoxville Symphony's Board of Directors (Kramer & Ewers 1963; Membership Cards; Nelson 1969).

Equally substantial was his involvement with the Tennessee legal community (i.e. law schools and bar associations). Judge Taylor frequently sat as a moot court judge at Vanderbilt's and UT's law schools (Wade 1954; Warner 1964; Warner 1968); reviewed papers for the *Tennessee Law Review*, the publication of UT's law school (Wicker 1964); and served as a guest speaker at several UT law school classes (Miller 1970; Durand 1971).

Although Judge Taylor's involvement in civic groups and the legal community does not highlight his influence as effectively as his reversal rate, caseload, etc., this information speaks to the fact that he viewed his job as more than just hearing cases. A federal district judge is the "face" of the judicial branch in the district. The reason why I discussed Taylor's involvement with law/community groups under the "Personal Life" section rather than the "Impact on District" section was because community involvement is not a required component of being a federal district judge. Taylor's involvement in his community far exceeded the requirements of his office.

While none of the above factors individually "prove" Judge Taylor's influence as a federal district judge, when looked at collectively, the evidence lends support to the argument that Taylor was an exceptionally influential judge.

VI. APPLICATION AND POLICY IMPLICATIONS

While Supreme Court nominations garner substantial media coverage, the media sparsely covers court of appeals nominees, and national attention of federal district nominations is almost nonexistent. Hopefully, this paper will bring to light the importance of federal district judges. If a citizen has a case heard in federal court, his/her federal district judge will almost always be the final arbiter in the matter (Rowland & Carp 1996). A more complete understanding of a district judge's importance will lead to greater scrutiny of district court nominations by the media, which will potentially get more citizens involved in writing their senators regarding judicial nominations.

Many of the issues that were prevalent during Judge Taylor's tenure are still at the forefront of debate regarding judicial efficacy. For example, burgeoning caseloads continue to be a major concern throughout all levels of the federal judiciary. According to People for the American Way (2013), a center-left advocacy organization, the backlog of civil cases has become especially prominent because criminal cases take precedent on the federal court dockets. The number of criminal cases at the federal level has increased by over 70% in the past ten years. The American Way argues that this has caused smaller litigants in civil cases to accept lower settlements due to the costs associated with a protracted trial and the prospect of going years without compensation in the case. In addition to increases in the number of criminal cases heard by federal courts, the caseload problem has become a more pressing issue because of vacancies in the federal judiciary. As of late 2013, approximately 19 vacancies existed on the circuit courts, and 90 judgeships remained unfilled at the district court level (American Way 2013). These vacancies are caused primarily by partisan gridlock in the U.S. Senate, where neither party wants to confirm a nominee from the opposing party. Lastly, the ability of the courts to handle their

dockets has been further dampened by the recent sequesters and shutdowns by the federal government. The sequestration of March 2013 led to the federal court's budget being reduced by approximately \$350 million. This cut in funding led to massive layoffs of federal judiciary support staff, and even forced the federal defenders office to reduce its workforce by 8 percent (Lithwick 2013).

The partisan gridlock in the Senate will not dissipate anytime soon, so the problem of judicial vacancies will only worsen. Similarly, it is unlikely that the budget of the courts will be increased significantly, so the problem of understaffing will remain a constant struggle. Lastly, the increase in litigation, especially from criminal cases, will likely continue in upcoming years. Therefore, the existing federal district judges stand as the last line of defense against an uncontrollable federal court docket. These judges should use the tactics/techniques that Judge Taylor employed during his tenure in order to better handle the issues of today.

VII. CONCLUSION

In my interview with Judge Taylor's son, Robert Taylor Jr., I asked him to describe his father in a phrase or two. Mr. Taylor responded with the following: "My father possessed a tireless devotion to the federal judiciary, [and his] commitment to justice was more than just a platitude." After examining his life and career, I can say with absolute certainty that I agree with Mr. Taylor's assessment of his father. Judge Taylor was a man who put the needs of the people in the Eastern District first and foremost. Similarly, Judge Taylor spent his career focusing on how to improve the federal judiciary, making it more efficient and equitable, rather than putting personal advancement in the forefront of his mind.

The data gleaned from this examination is limited by the fact that only half of Taylor's cases were examined and coded. In order to increase the scope and accuracy of this study's analysis, the remainder of his cases could be examined, coded, and analyzed. The number of citations of Judge Taylor's decisions by other judges could be expanded to include his full career as well. This paper will hopefully serve as an example to future researchers who are employing the case study method in the examination of someone's career. The method and analysis used in this paper could be applied to judges at the local, state, and federal level, but is not limited to the judicial field. Similar examinations could be conducted to measure the influence of a congressman or senator in the field of political science, or the influence of an athlete or celebrity in the field of sociology.

Judge Robert Love Taylor was frequently quoted as saying that his role as judge was to "promote justice between man and man" (Conner 1987; Murrian 1987). The number of people that Judge Taylor impacted during his nearly half century on the bench is almost innumerable. The fact that Chief Justice Burger personally selected Taylor to preside over two high-profile cases in Illinois and Maryland shows the level of respect that Taylor garnered within the legal

community (Susano 2009). His ability to handle cases in an efficient, equitable manner; his influence on colleagues to adopt practices which improved caseloads throughout the United States; and his opinions, which garnered citations across the country, make Judge Taylor stand out as a truly influential federal district judge. With the current struggles facing the American judiciary, it is clear that we need another judge, or better yet multiple judges, like Robert L. Taylor.

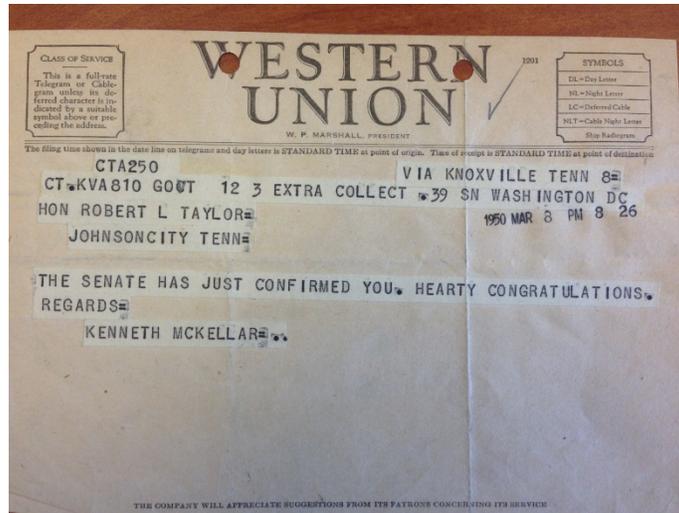
IMAGES

Image 1: Photograph of Judge Robert L. Taylor



Source: Modern Political Archives at the Howard H. Baker Jr. Center for Public Policy (Box 8, Folder 6). University of Tennessee, Knoxville, TN.

Image 2: Telegram from Senator McKellar to Judge Taylor Announcing his Confirmation



Source: Modern Political Archives at the Howard H. Baker Jr. Center for Public Policy (Box 3, Folder 10). University of Tennessee, Knoxville, TN.

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