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## **Perceptions of administrative policymaking authority: Evidence from interviews in three state court systems**

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### **Abstract**

Using elite interviews, this paper explores how actors in state courts in the United States perceived and performed their administrative policymaking capacity during the COVID-19 pandemic. It argues that considering both hierarchical and local control explanations of the behavior of those working in courts offers a more nuanced explanation of the distribution of administrative authority in these systems. The interviews reveal that actors in court systems that both concentrate and distribute administrative authority behave in ways that contradict the prevailing explanatory models – in more administratively decentralized systems, some court actors sought more guidance from central actors whereas in a centralized system, some court actors acted in ways that deviated from central commands. In addition to expanding our understanding of the consequences of centralized and decentralized administrative authority for court users, this paper provides evidence of the benefits and challenges of conducting technology-mediated interviews with an elite sample.

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### **Key words**

Judicial administration; subnational courts; administrative policy; judicial politics

### **Resumen**

Utilizando entrevistas de élite, este trabajo explora cómo los actores de los tribunales estatales de Estados Unidos percibieron y desempeñaron su capacidad de formulación de políticas administrativas durante la pandemia de la COVID-19. Sostiene que considerar tanto las explicaciones jerárquicas como las de control local del comportamiento de quienes trabajan en los tribunales ofrece una explicación más matizada de la distribución de la autoridad administrativa en estos sistemas. Las entrevistas revelan que los actores de los sistemas judiciales que concentran y distribuyen la autoridad administrativa se comportan de formas que contradicen los modelos explicativos predominantes: en los sistemas administrativamente más descentralizados, algunos actores judiciales buscaban más orientación de los actores centrales, mientras que, en un sistema centralizado, algunos actores judiciales actuaban de formas que se desviaban de las órdenes centrales. Además de ampliar nuestra comprensión de las consecuencias para los usuarios de la autoridad administrativa centralizada y descentralizada de los tribunales, este trabajo aporta pruebas de las ventajas y los retos de realizar entrevistas con una muestra de élite a través de la tecnología.

### **Palabras clave**

Administración judicial; tribunales subnacionales; política administrativa; política judicial

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## 1. Introduction

Prior to the beginning of the COVID-19 pandemic, many court systems across the globe relied on in-person transactions as people worked toward the resolution of their civil legal problems. Subnational courts in the United States were no exception. Lawyers, parties, jurors, court staff, judges, and others within these courts' ecosystems were often required to be physically present to conduct court business. However, the pandemic disrupted this traditional model, forcing court systems to swiftly adapt and implement alternative operational policies to ensure continuity of the administration of justice.

This shift presented court systems with numerous administrative challenges, such as: how individuals could submit court documents if courthouse entry was restricted, how witnesses could participate in hearings while adhering to social distancing guidelines, and how the service of legal notices could be certified in the absence of in-person signatures due to limitations on postal services. Addressing these challenges required considerable effort by those working within the court systems. But who within a court system bears the responsibility of designing and carrying out administrative policies? This question is of particular importance as policies regarding how cases are initiated, documents are filed, hearings are scheduled and governed, and judgements are carried out influence court users' access to legal remedies.

Scholars have documented variation in the formal allocation of the power to make administrative, or operational, policies in national and subnational courts, yet there is limited research exploring how this authority is exercised in practice (e.g., Raftery 2015, Clopton 2018, but see Leib 2015, Weinstein-Tull 2020). Most U.S. states' constitutions grant high courts the authority to administer the operations of the courts within their jurisdiction. This constitutional grant of authority theoretically assigns the responsibility for developing answers to policy questions like those above to state supreme courts and the central administrators of court systems. However, the actual extent of the power held by central actors can vary quite a bit from system to system, leading lower courts to have wider or narrower bands of discretion to self-administer operations within their individual jurisdictions. Rules and institutional structure may also fail to tell the whole story: local dynamics and intra-branch politics also play important roles in determining who exercises administrative power in court systems.

This article utilizes a hybrid theoretical framework to inform its investigation of the practical exercise of administrative power. This framework integrates elements from the hierarchical and local control models, which are two established approaches for understanding the work of courts. By integrating these models, this study offers a more nuanced explanation of the relationship between the monitoring capabilities of high courts and the perspectives of lower courts regarding the adaptation of operational policies to their specific local contexts. This approach permits a comprehensive investigation of how high court access to monitoring mechanisms influences lower court decision-making in administrative matters across subnational courts within a federal system.

Drawing upon the wave of operational choices made by subnational courts in the U.S. in response to the COVID-19 pandemic, this paper delves into the intrastate dynamics of operational policymaking through a series of interviews conducted with judges, court administrators, and other key court personnel. While the decisions made by courts

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regarding case processing and service delivery largely mirror the categories of decisions made outside the pandemic context, the unique circumstances presented by the pandemic offer a distinctive opportunity to examine these decisions in an interjurisdictional manner. By exploring variation in operational policy responses both within and between court systems in the wake of this universally experienced shock, insights are gained that can be applied to future studies of administrative decision-making in court systems with similar organizational characteristics.

The methodological approach employed in this study thus offers relevant insights for other scholars interested in undertaking studies of administrative decision-making in court systems. First, this paper directly addresses methodological considerations surrounding the use and efficacy of elite interviewing. Gaining access to an elite sample comprised of judges, court administrators, clerks, and other key actors within court systems poses challenges, but various strategies exist to overcome barriers to accessing respondents (see Goldstein 2002 for a comprehensive overview). In addition to discussing strategies for obtaining access to judicial professionals, this article will also examine the advantages and disadvantages of employing interview-based methodology when examining decision making processes within courts and other political institutions (Hochschild 2009). Lastly, this paper aims to illuminate the challenges and opportunities arising from the pandemic in conducting interview-based research, and to draw insights from the experiences of conducting this sort of research during this period. Through an examination of these lessons, this study seeks to provide guidance that can be applied to similar research endeavors in the post-pandemic era.

This paper begins by providing a brief overview of the hierarchical and local control models, which serve as the theoretical foundations for this study. It then presents a novel synthesis of these theoretical frameworks, underscoring their complementary nature in an explanation of operational decision-making by court actors. The paper continues by contextualizing the study by discussing the rationale for focusing on subnational courts in the United States and the unique opportunity presented by the pandemic as a research catalyst. Next, the paper discusses the process of participant recruitment for the interviews and outlines the procedures used in data analysis. The paper concludes with a discussion of the results that considers the applicability of the study's findings beyond the specific court contexts examined, both domestically and internationally. By establishing these connections, the paper aims to motivate future comparative work on administrative decision-making processes.

## **2. Hierarchical and local accounts of the exercise of power in court systems**

Scholars of the work of American courts tend to fit into two main camps: those who study the causes and consequences of decisions in the courtroom (adjudicative decision-making) (e.g., Songer *et al.* 1994) and those who study the choices that determine the efficient, effective management of cases and court operations more generally speaking (administrative decision-making) (e.g., Raftery 2015, Clopton 2018). These two literatures are not typically in conversation with one another, and when they are, administrative choices are usually employed as considerations which help determine adjudicatory choices – as opposed to being explored as products of decision-making

processes themselves.<sup>1</sup> This section provides a brief overview of these two theoretical perspectives and concludes by advancing a hybrid model that considers their complementary elements.

The hierarchical model posits that when high courts can monitor and enforce their decisions, lower courts are more likely to comply with them. This model primarily focuses on adjudication, an area where high courts in common law systems enjoy considerable monitoring authority. Due to its emphasis on adjudicatory decision-making, the hierarchical model lacks the capacity to explain the diversity in rules and institutions that may influence the degree of control high courts possess over lower courts. Specifically, it may not adequately consider the variations in high courts' effectiveness in overseeing the implementation of policies that extend beyond the realm of adjudication, such as administrative policies.

Scholars rely upon courts' hierarchical structures to explain why actors at the top of the hierarchy are relatively unhindered in achieving their policy goals while those below are constrained by the threat of monitoring through the appellate process (Songer and Sheehan 1990, Songer *et al.* 1994, Benesh and Reddick 2002).<sup>2</sup> It is important to emphasize "threat" here – even if lower court actors' decisions do not have a high probability of being overturned by a higher court, they may still behave in a compliant fashion due to the possibility of such action (e.g. Cameron 1993, McCubbins *et al.* 1995). This literature does not forestall the possibility of lower courts playing a role in setting policy as they may strategically shape opinions to avoid reversal to preserve local interpretations of law or to inform the choices of appellate courts (e.g., Caldeira and Wright 1988, Lindquist and Klein 2006, Rachlinski 2006, Beim 2016, Savchak and Bowie 2016, Bowie and Savchak 2019). However, the hierarchy – and the formalized system of monitoring it relies upon – creates a centralized system of power and functions as a structural limitation on the choices these courts make.

In comparison to the voluminous literature on the power to make policy in the adjudicatory realm, the empirical study of the authority to make generally applicable procedures in American national and state-level court systems is more limited, despite an acknowledgement of the time judges and court actors spend on crafting this type of policy (Smith and Feldman 2000; but see Pollack 2020, pp. 719, 724, 730–758). Of these works, the majority tend to focus on the informal development of procedure. In other words, these studies examine how local courts make unofficial procedural adjustments – often in "opaque" and "ad hoc" ways – given their local context (Carpenter, Steinberg

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<sup>1</sup> For example, scholarship acknowledges that a judge's administrative context can vary depending on the level of the court. Scholars have highlighted the various roles played by trial court judges, such as case managers, settlement directors, developers of the factual record, and jury wranglers, in studying their decision-making in the adjudicatory context (see generally Resnik 1982, Kim *et al.* 2009, Bookman and Noll 2017). While these studies advocate for considering the administrative work of judges, they primarily focus on describing case processing within individual cases (e.g., Kim *et al.* 2009, pp. 89-90, 92). They aim to explain specific case outcomes by examining instances of administrative decision-making. However, these works do not delve into the broader question of who has the authority to make administrative policies that generally impact all court users.

<sup>2</sup> Another possibility is that lower courts aren't fearful per se of monitoring via appeals, but that instead judges are motivated to find the "right answer" and thus the appeals process is meant to serve more as error correction method than a way to punish shirking or rein in deviant preferences (Kornhauser 1995, Shavell 1995).

*et al.* 2018, Sudeall and Pasciuti 2021, pp. 1365, 1379, Carpenter, Shanahan *et al.* 2022; see also Bookman and Noll 2017, Bookman and Shanahan 2022). There is a growing interest in the study of who has the formal authority to create court rules and processes. This burgeoning literature also suggests a highly localized account of administrative policymaking, deemphasizing hierarchical explanations.

It is possible that these studies deemphasize the hierarchical account of judicial decision-making for formal/structural reasons, as evidence suggests that central administrative actors have gradually ceded control in a lot of administrative spaces to local courts (see Weinstein-Tull 2020, pp. 1066–67). Therefore, administrative authority becomes more diffuse, and a top-down model of policymaking turns out to be more difficult to apply. It may also be the case that, due to the complex organizational structures of state courts, formal and informal styles of administrative policymaking by lower courts would go unmonitored anyway, as a high court's capacity to police this type of activity is very limited (Weinstein-Tull 2020, p. 1102). Said another way, given the lack of formal monitoring mechanisms, trial courts are incentivized to develop local ways of processing cases as they feel more distant from a centralized state authority (Leib 2015). Consequently, this literature identifies an "obscure" and "diverse" array of procedural approaches in state courts (Weinstein-Tull 2020; see also Decker 2014).

Although these studies provide evidence of court actors constructing process according to their understanding of their local contexts (e.g., Leib 2015), the empirical approaches employed in this research is limited in its ability to evaluate hierarchical and local explanations. The localized account is a viable one given the above reasons why scholars would expect a proliferation of local-level administrative policymaking, yet this local explanation is not evaluated in a way that would allow us to rule out the hierarchical dynamics which may also play a role. Studies of single jurisdictions (e.g., Leib 2015) and comparative descriptive studies of organizational structures (and not of the policies they produce, necessarily) (e.g., Weinstein-Tull 2020) constrain scholars' ability to rule out the top-down structural constraints which may be present in a given court system. Therefore, researchers miss out on an opportunity to observe the interaction between centralized explanations guided by the structural features of courts and more diffuse local explanations of policymaking activity.

### 2.1. *Synthesizing hierarchical and local accounts of power in court systems*

Court systems vary in how they are formally structured, and thus also vary in how they assign administrative authority. The organizational features of judiciaries determine which actors get to make choices about how courts function. In the U.S. context, this variation is observed across its subnational court systems: some state judiciaries are more centrally administered, with procedural power concentrated in the state's supreme court and its statewide administrative office (National Center for State Courts, *State Court Organization Survey, v.2016*, on file with author). In states with centralized judicial administration, lower courts may have very little *formal* autonomy to independently design operational policies that fit their unique contexts. In more decentralized states, local jurisdictions may have considerably more formal power as the relationship between central management and courts adheres less to the traditional hierarchical structure. In these systems, direction from high courts and state administrative offices

could less often take the shape of a “dictate” and may more often be considered as “advice.”

In addition to structural determinants of courts’ ability to independently develop administrative policies, courts and court actors vary in their relationship to their local institutional contexts (Leib 2015). These courts may be situated in parts of states that are ideologically or geographically distinct from the places where statewide policies are designed. Further, those working within state courts are not a homogenous group of people. Their relationship to the courts in which they work is likely influenced by their own ideologies and understandings of court operations (Weinstein-Tull 2020, p. 1032). It thus follows that, in addition to variation in formal permission or authorization to act, courts staffed with people who *perceive* higher levels of latitude to act will be more likely to do so – even if that means contradicting a high court’s preferences.

TABLE 1

<i>Individual/local indicators</i>	<i>Structural indicators</i>	
	<b>Weaker hierarchy</b> (more decentralized)	<b>Stronger hierarchy</b> (more centralized)
<b>Ideologically distant local context</b>	High permission to act, high perception of local authority	Low permission to act, high perception of local authority
<b>Ideologically aligned local context</b>	High permission to act, low perception of local authority	Low permission to act, low perception of local authority

Table 1. Predicted levels of administrative power diffusion within state court systems.

Attentiveness to variation in system design is important, but the perceptual dimension provides valuable additional context for why differing approaches to the design of court policy arise. Table 1 offers a demonstration of the critical role perception plays in determining the policymaking authority of court actors. In administratively decentralized states where lower courts have quite a bit of authority to act unilaterally, there may be a relative lack of activity if the actors in the lower courts perceive ideological compatibility with high court guidance. This insight draws upon work conducted on the adjudicatory choices of lower courts. If lower court actors agree with high court actors about how administrative matters should be handled, they will defer not because of requirement, but because they agree with those working at the top of the hierarchy with whom they are ideologically aligned. Conversely, in centralized states where lower courts are quite constrained by the hierarchy, ideological incompatibility may spur these courts to act, even in the face of monitoring or sanction. In these courts, the pull of their local context weighs more heavily than these possible threats from above. These sources of variation thwart our ability to apply either of these explanations of administrative authority consistently across state systems.

### 3. Data and methodology

As noted above, the empirical study of the policy choices of those working in courts is principally focused on understanding the inputs and outputs of adjudicative decisions made in cases. As a result, it is common practice to rely on written opinions and records



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of judges' votes. Taking an approach that relies solely on what is written limits our ability to explore the underlying decisional dynamics of policy design and implementation, like those with which this project is concerned (Linos and Carlson 2017, Carpenter, Shanahan *et al.* 2022). Gaining a deeper understanding of these processes requires collecting information on actors' perceptions, including their understanding of their role in decision-making processes and their interpretation of local contexts (Hochschild 2009). Given the nature of the research question, I selected the method I judged to be the most appropriate to its study, and conducted a series of semi-structured interviews in states that represent a diverse set of administrative structures (see generally Seawright and Gerring 2008, Gerring and Cojocaru 2016). In addition to describing the study's approach to selecting case study states, recruiting interview participants, and analyzing the data, this section also highlights the opportunity presented by the pandemic to comparatively investigate these processes. Furthermore, it discusses the challenges and advantages associated with conducting an interview-based study during a pandemic.

### *3.1. The value of an exogenous shock for the comparative study of administrative authority*

Until March 2020, empirical scholars studying administrative power in U.S. state courts were limited in their ability to comparatively evaluate hierarchical and local accounts of power distribution. Of course, the extant scholarly work described above has yielded valuable insights about how courts design paths to case resolution and how litigants experience them. But these pieces can tell us much less about the inter- and intra-systemic factors that determine who gets to make choices about the shape of those paths. States, which have the authority to design court systems suitable to their needs, vary in how they distribute power – across judges and other court actors and across levels of the hierarchy. Prior scholarship has described the features of court systems that lead to greater levels of centralization or diffusion of decisional authority, but researchers have lacked a way to systematically compare these accounts. Admittedly, it is difficult to undertake such an effort with fifty state court systems responding to different pressures and catering to diverse sets of public and institutional needs.

In March 2020, court systems were faced with a set of conditions that required the vast majority of them to rethink the ways they conducted business: the bulk of court operations pre-pandemic required lawyers, parties, jurors, non-lawyer advocates, court staff, judges, and others in the court ecosystem to be physically present to file paperwork, appear at hearings, and gather legal information – among other activities (Pollack 2020, see also Shanahan *et al.* 2020). As the seriousness of the pandemic and its implications became clearer, courts were faced with the challenge of designing response plans which dramatically disrupted the status quo of case processing. These plans required courts to make decisions about which hearings to prioritize and which still needed to happen in person, how litigants would file paperwork electronically while still meeting procedural thresholds, and how to hold remote hearings that retained the “feeling” of being in court.

The common exogenous shock presented by the COVID-19 pandemic thus creates the opportunity to examine who in state court systems had the ability to weigh in on

decisions about case processing while holding the pressure courts were facing somewhat constant. In other words, the pandemic gives us a chance to take a snapshot of the distribution of administrative decisional authority in state courts when the same general policy question had to be answered across systems. At any other time pre-pandemic, such a study would have been difficult to conduct given the different priorities of and pressures on state judiciaries.

### 3.2. Case study selection

The interview sample is comprised of nearly sixty interviews with supreme court justices, trial and intermediate appellate-level judges, state court administrators, trial court administrators, clerks, and caseload managers across three states.<sup>3</sup> The study states, A, B, and C,<sup>4</sup> were selected because they vary according to key structural indicators of interest and because they are relatively similar with respect to a set of relevant political variables that may play a role in the level of policymaking activity observed in state courts during COVID-19.<sup>5</sup>

TABLE 2

	A	B	C
Administrative structure	More centralized	More decentralized	More decentralized
Legislature involved in setting court rules/procedure*	Yes	Yes	No
State-level political context	Unified Democratic Control	Unified Democratic Control	Unified Democratic Control
Ideological heterogeneity of citizens**	Near average	Near average	Near average

**Table 2. Court structure and political environments of study states.**

\* Clopton (2018).

\*\* Tausanovich and Warshaw (2013).

With respect to the areas of structural difference, study states vary according to the design of their court system's administrative apparatus. As shown in Table 2, States B and C are more decentralized in their administrative structures, while State A has a more centralized structure.<sup>6</sup> States also vary according to the legislature's involvement in setting the formal rules of procedure. In States A and B, the legislature plays a role whereas in State C the legislature has not traditionally played this role (Clopton 2018, p. 10). These two sources of variation were considered as indicators of the centralization

<sup>3</sup> See Table 3 for an accounting of interviews completed by position by state.

<sup>4</sup> I am choosing to keep the states deidentified as this manuscript is part of an ongoing project.

<sup>5</sup> They are also relatively similar with respect to their civil caseloads – the states are close to the median number of incoming civil cases per 100,000 residents and are less than one-third of a standard deviation away from one another on this measure. That said, caseload statistics may be misleading measures of case volume given variation in reporting requirements and standards across states, hence this statistic's reporting in a footnote (for a comprehensive discussion, see Shanahan *et al.* 2022).

<sup>6</sup> Determined using data from the National Center for State Court's (NCSC) 2016 administration of the State Court Organization survey, as archived by Weinstein-Tull (2020) and on file with the author. The NCSC's data collection effort represents the most comprehensive and contemporary account of administrative authority in state court systems in the United States.

and independence of policymaking authority in courts, respectively. Here, it is expected that court actors in State C to feel the greatest level of judicial independence given the lack of legislative involvement in the rulemaking process. We would also expect to observe that court actors in State C perceive that policymaking authority was distributed across courts in their state given its decentralized structure. Similarly in State B, it is expected that the judiciary's structure would guide a view of administrative authority as allocated across a greater number of actors. Finally, in State A, it is expected that court actors would feel the most constrained in their ability to design policies that are different from those that the central administrative office dictated.

Study states were also selected because of their relative similarity on measures of the state's political context. Throughout the first year of the COVID-19 pandemic, all three states enjoyed unified Democratic control of their state-level political institutions. In these states, high court actors may have been in alignment with the plans crafted by the political branches of their state, in terms of their understanding of the crisis and plans for response. They may also have explicitly coordinated with the political branches on a response. These features of court response are more likely in states with unified political control (i.e., states where cooperation between branches is more likely). This type of political environment may contribute to greater autonomy afforded to court actors (because the political branches trust them to act) or less autonomy (if the political branches chose to consolidate power/have authority to direct court business).

The local political context can also affect court actors' perceptions of administrative autonomy, as they may be influenced by the ideological diversity of the jurisdictions in which they work (Leib 2015). To account for this diversity, I use Tausanovitch and Warshaw's (2013) measure of the ideological heterogeneity of states. States A, B, and C are states with similar levels of ideological heterogeneity among their citizenry and all three states are closely clustered around the average level of heterogeneity.

### *3.3. The benefits (and challenges) of exploring court decision-making processes through interviews*

I explore court actors' sense of their agency in creating administrative policy in response to the pandemic through semi-structured interviews. As compared to other methods of collecting information on people's attitudes and behaviors, like surveying or through observation, interviewing provides for a high level of participant engagement which allows the researcher to probe and extract additional relevant themes (Kvale and Brinkmann 2009). Interviewing is especially valuable if the researcher seeks to understand and compare the perspectives of people involved in "processes of interest" across roles and political contexts (Leuffen 2006, Tansey 2007, p. 769, Carpenter, Shanahan *et al.* 2022). Semi-structured interviews are particularly useful for elite interviewing, as this method allows the interviewer more flexibility in data gathering (Aberbach and Rockman 2002). Finally, and perhaps most obviously, interviewing should be used when it is the method that best aligns with the research questions relevant to the project at hand (e.g., Carpenter, Shanahan *et al.* 2022).<sup>7</sup>

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<sup>7</sup> Of course, this is not an exhaustive overview of the benefits of interview methods. See Mosley (2013) for a comprehensive treatment of the subject.

Of course, identifying that interviewing would be the best method given the study's core research question and that judges, court administrators, and other key court actors would be the appropriate target population for the project were the "easy parts" of this study's design – recruiting willing participants within the sampling frame and developing appropriate interview materials were more difficult endeavors (Goldstein 2002). A unique set of challenges are presented by engaging in research that demands access to the work of political actors (and access to the actors themselves). Indeed, in speaking of judges in particular, Richard Posner once remarked that "most judges are cagey, even coy, in discussing what they do" (Posner 2010, 2–3 in Mark and Zilis 2018). Below, I reflect on some of the lessons and strategies that contributed to the preparation of the interview protocol and my access to a pool of respondents.

First, it is critical to have a thorough understanding of the political event or outcome that one intends to inquire about in advance of undertaking an interview-based project (Goldstein 2002). This preliminary work is crucial for gaining access and generating "willingness on the part of the judiciary" to participate in a research project (Roach Anleu *et al.* 2015, 149). Before collecting the data that I analyzed for the present study, I conducted a series of nearly two-dozen exploratory interviews with respondents (judges, court administrators, and court staff) from courts around the United States. I gained access to these respondents principally through the relationships I formed through engagement with the American Bar Association's COVID-19 Task Force. Through presentations to the Task Force of research complementary to this study and engagement with its various subcommittees, I developed a rapport with a number of its members, many of whom were court professionals themselves. These relationships were incredibly valuable for overcoming the hurdles to accessing subjects (like those in gatekeeping roles), allowing me to connect with a larger group of court staff, administrators, and judges for the piloting phase of the project (Leech 2002, Conti and O'Neil 2007, Harvey 2010). Engaging with this committee also served to establish my credibility in the field more broadly speaking (Aberbach and Rockman 2002, 674).

My initial goal was to gather information that would inform my study design through listening to the experiences of judicial officers who played a role in designing and implementing pandemic-related administrative policies. This round of interviews also served as a means to test out my interview questions and to refine my themes of interest (Berg 2001). In addition to the development of the main questions for the interview protocol, the piloting stage revealed that a structured method of interviewing was not going to be feasible with this population. While a more structured method of interviewing has its benefits (see generally Bradburn 1983, Fontana and Frey 2005), it was clear that the more effective approach would involve setting goals for main topics of interest to be covered – thus avoiding the potential for "a clumsy flow of conversation" presented by a structured discussion (Kvale 1996, Aberbach and Rockman 2002, 674).

After the piloting stage, I sought to recruit respondents who met the requirements of my sampling frame.<sup>8</sup> I quickly realized that "cold calling" (or e-mailing) court actors was not going to be an efficient strategy for connecting with prospective interviewees

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<sup>8</sup> Data from the pilot stage is not presented in this manuscript, as these conversations were used to refine the protocol and sampling method for the study at hand.

(Goldstein 2002, 669). In order to gain access to court actors in my target jurisdictions, I pivoted and leveraged existing personal and professional relationships, in addition to those connections I made serving as a COVID-19 Task Force liaison.<sup>9</sup> For example, a colleague's personal connection to the Chief Justice of State B led to both an interview with this court leader and to the Chief's drafting of a letter of support for the project, which I used to establish the legitimacy of my project (and my own personal credentials) as I reached out to others in the state (e.g., Nir 2018).

Gaining access to respondents in the other two target states proved more difficult, as I either had newer or otherwise less-established professional and personal relationships or lacked them entirely. For example, and as demonstrated in Table 3, I did not manage to obtain a high level of participation – especially among judges – in State A. In addition to the general cautiousness political elites express when they are asked to participate in research studies, the centralized structure of this judiciary may be another key factor which helps to explain the recruitment challenges (Nir 2018, pp. 80–81). In this state, all initial contact with court staff was established through a single, centralized channel. In my early attempts to schedule interviews in State A, I engaged in a cold-calling recruitment strategy. For those court actors I did reach, they would not independently agree to an interview. Instead, they routed me to a set of central administrators, who in turn vetted my project and subsequently granted permission to conduct the interviews.<sup>10</sup> In this case, I gained access to additional participants through a relational strategy: I sustained a pattern of communication with those administrators in gatekeeping positions and established relationships with them (see generally Nir 2018, see also Harvey 2010, Goldman and Swayze 2012). This strategy proved fruitful as interviews were secured through the cultivation of relationships with the gatekeepers (Harvey 2011, 433). Indeed, gaining access to interview subjects has proven to be “more art than science” (Goldstein 2002, 669). The interviews conducted per state and position is detailed in Table 3.

TABLE 3

State	A	B	C	N
Clerks and court staff	6	2	6	14
State-level administrators	2	3	1	6
Trial court administrators	1	9	0	10
Judges (appellate and trial)	2	14	12	28
<i>N</i>	11	28	19	58

Table 3. Interviews completed per state by position.

### 3.4. *The benefits (and challenges) of conducting interview research during a pandemic*

The comparative study presented in this paper was made feasible by the exogenous shock of the pandemic on state court systems. By utilizing this opportunity to examine administrative decision-making dynamics across states, the study capitalized on the

<sup>9</sup> Target states were selected before I reached out to personal and professional connections – these connections did not influence the selection of the case study states.

<sup>10</sup> Actors in the central administrative office provided me with lists of people to contact and constrained my outreach to this list.

rapid adoption of communication technologies, particularly videoconferencing, among the members of the targeted professional population. However, the use of technology-mediated interviews also introduced challenges during data collection. While its use has become increasingly accepted in qualitative research, the use of technology in data collection presents new considerations for researchers. This section offers an overview of some of the factors a researcher should be mindful of when conducting technology-mediated studies, as well as some reflections on how these considerations were managed in the present study.

Depending on the type of question the researcher endeavors to answer, videoconferencing can be a viable and cost-effective alternative to conducting in-person interviews (Sedgwick and Spiers 2009, see also Shore *et al.* 2007, Nehls *et al.* 2015). However, there is an active debate among members of the qualitative research community regarding the equivalence of technology-mediated data collection methods and the “gold standard” of in-person methods (Massey 2003, McCoyd and Kerson 2006, 390 in Deakin and Wakefield 2014).<sup>11</sup> Those who perceive videoconferencing as a less than ideal method emphasize the limitations of a researcher’s ability to immerse themselves in their respondents’ contexts, the challenge of capturing physical cues, and further posit that it is easier to build rapport with research subjects in face-to-face interactions (Sedgwick and Spiers 2009, see also Chapman and Rowe 2001). On the other hand, proponents of videoconferencing have found evidence suggesting that it can elicit natural responses from participants and facilitate the disclosure of sensitive information, as participants may feel more comfortable and expressive in their home environment (Deakin and Wakefield 2014). This heightened comfort can potentially shift the power dynamic between researcher and subject, as study participants have greater control over access (e.g., Fujii 2017, see also Howlett 2022).<sup>12</sup>

Undertaking a project that relies on technology introduces specific challenges that a researcher needs to consider which are distinct from an in-person study. For example, scheduling interviews can pose potential logistical difficulties, particularly when managing a group of prospective interviewees that are sited across time zones. Additionally, making sure that all research participants have access to videoconferencing software – and have the requisite technological skills to navigate those tools – can also be a hurdle (Deakin and Wakefield 2014, Lobe *et al.* 2020). While this concern was largely mitigated in the present study as these tools became more ubiquitous over the course of the pandemic, initially it was important to confirm that a participant used a particular modality prior to scheduling the interview and sending the link to a meeting room.

Another issue researchers should be mindful of is that the availability and reliability of internet connections can affect the quality of interviews, with a poor internet connection potentially disrupting the natural flow of conversation or requiring a mid-interview shift

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<sup>11</sup> I recognize this debate while also acknowledging that the present study solely collected data using a videoconferencing modality. This limits my ability to assess if participants would behave differently, or reveal different types of information, across in-person and remote settings.

<sup>12</sup> However, research also suggests that while the home environment can make respondents feel more comfortable in a remote versus an in-person setting, this benefit is predicated on a research participant’s willingness to open their personal spaces to researchers in the first place (Fujii 2017, see also Howlett 2022).

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to an alternative modality (e.g., telephone) (Sedgwick and Spiers 2009, Deakin and Wakefield 2014). Over the course of this study, only one video call was interrupted by an internet connection issue and had to be continued over the phone. Given that most respondents participated from their offices in government buildings, internet connectivity was not a major concern for this project. With that said, providing a telephone number as part of scheduling a videoconferencing meeting helped to mitigate the delay in the flow of conversation in the one example in this study.

Another important factor to consider is videoconferencing fatigue – this is a concern specific to the researcher themselves (Bennett *et al.* 2021, see also Quinn *et al.* 2012). When conducting an interview study entirely remotely, a researcher may feel inclined to conduct a high volume of interviews in a day, as eliminating the need for travel likely allows for the scheduling of additional online meetings. However, taking such an approach leaves limited time for reflection or breaks in between interviews, potentially hindering the researcher's ability to process information effectively. Even when conducting research that is mediated by technology, it is important to strike a balance between maximizing interview efficiency and allowing sufficient time for reflection and personal breaks (Bennett *et al.* 2021). It is critical for researchers to schedule meetings at times that align with their energy levels, considering the time of day they schedule interviews and allowing sufficient spacing between interviews to mitigate fatigue (Bennett *et al.* 2021, 339–340).

### 3.5. Analysis procedures

In addition to basic information about the respondent's position and jurisdiction, participants were asked questions related to their 1) personal involvement and the involvement of others in their jurisdiction's policymaking processes, 2) evaluations of the current status of pandemic response in their jurisdictions, 3) attitudes about the policy changes and their perceptions of the attitudes of others working in their courts, 4) impressions of the consequences of these choices for the accessibility of the court, and 5) predictions about the durability of policy changes. Question categories 1–3 are of greatest relevance to this paper and responses in these categories are represented in the analysis reported below. Due to the nature of my sample, I am cautious about making overly general claims about my findings.

My coding and analysis processes were guided by the strategies and practices advanced by Braun and Clarke for conducting a reflexive thematic analysis (2006, 2013). The first stage of the process, in which I familiarized myself with the data, was conducted as a parallel process to interviewing/data collection. Immediately after conducting an interview, I wrote out a set of rough notes summarizing my initial impressions of the conversation, including synopses of the ideas and attitudes brought up by the participant which were relevant to my research questions. After conducting a set of interviews, I began to form an initial list of codes. To do so, I uploaded transcripts from the interviews to MAXQDA, a qualitative analysis software program. Using the program's interface, I carefully read the transcripts and assigned codes to the chunks of text that I viewed as relevant to the research question. In consultation with other experts in this field, I considered how different readings of the data might lead to different interpretations of the codes. This process helped me to refine and add nuance to my initial list of codes.

I then considered the relationships between my codes in the first iteration of theme development (Braun and Clarke 2006, pp. 84, 87). These choices were informed by the extant literature's conceptualization of the constraints hierarchies impose and the ways local context empowers individuals to innovate intra-jurisdictionally, but I was also open to uncovering new connections between concepts and the data that were consistent with existing explanations, as well as to relationships that may have been previously considered as contradictory to existing theory. I was also careful to consider the internal consistency and the distinctions between different themes (Patton 1990). Throughout the consolidation process (from codes to themes) I was also attentive to the role my own assumptions played in the initial creation and adjustment of themes (Gough and Madill 2012). In this stage, I acknowledged my role as an interpreter of the data – themes did not “emerge” from the data; I played an active role in constructing them given the background knowledge I gained in the preliminary stages of the project and my engagement with the literature.

#### **4. Discussion of results**

The analysis revealed patterns in the data which are suggestive of the interplay between hierarchical and local models of administrative policymaking authority. Presently, five key themes have been identified which relate to an actor's decision to hew closely to high court guidance or to develop a local jurisdiction-specific policy. Themes relating to the determinants of consolidated administrative authority included 1) the political and practical utility of relying on centralized authority and 2) resource provision incentivized deferral to central authority. Themes related to the determinants of a more diffuse allocation of administrative authority included 3) the perception of a policy vacuum at the top of the hierarchy and 4) a perceived mismatch between high court directives and the local context. A theme which fell into both categories was 5) perceptions of monitoring determine use of policymaking authority, which fit according to the level of monitoring the court actor perceived given their context.

Court actors in centralized (A) and decentralized (B, C) court systems who perceived that they were ideologically aligned with high court guidance tended to lack incentives to fit policies to their local contexts. These interviewees spoke of the value of centralized authority and a hierarchical administrative structure. They also offered examples of incentives provided by high courts and central administrative offices which motivated them to adopt policies set by these actors. Interestingly, ideologically misaligned actors in decentralized states also cited incentives as justification for adopting high court policies, a trend which is unpacked below. Actors in State A also spoke of the values of centralized administration, but some identified the fears of sanction associated with deviating from a central plan and provided examples of this style of monitoring.

Court actors who perceived they were ideologically misaligned with policymakers at the top of the hierarchy crafted policy innovations both formally (B, C) and informally (A) to better fit their local context. In decentralized systems, deep understanding of the court's local political context drove many respondents to develop jurisdiction-specific policies. In states B and C, respondents also pointed many times to the lack of formal monitoring as an explanation for the diversity of administrative policies promulgated in their states. While more cautiously reported due to the limitations of the data, limited evidence from state A suggests that when local court actors are in ideological



disagreement with high court actors, they took steps to work within the rules (or around them) to better meet the needs of the public. These dynamics demonstrate that neither structure nor local context wholly explain the observation of greater levels of policy heterogeneity or homogeneity in state courts. Instead, hierarchical pressures are exerted on actors in decentralized systems, and the pull of local context can drive the actions of those in centralized systems.

#### *4.1. Themes related to perceptions of limited/constrained administrative policymaking authority*

Actors across states A, B, and C identified reasons why they chose to follow directives given by high court and central administrative actors. The two major themes which emerged were 1) the political and practical utility of relying on centralized authority and 2) resource provision incentivized deferral to central authority.

##### 4.1.1. The practical and political utility of relying on centralized authority

A first theme concerns actors' perceptions of the usefulness of following high court actions, thus limiting their independent policymaking authority. This was unsurprisingly a more common sentiment in State A, with actors acknowledging the value of centralized policymaking for both their work and the uniformity of experience for court users. Court staff and clerks in State A reported this sentiment in the following ways:

Being centralized allows us more uniformity so that when self-[represented parties] that might file a case here and then go file a case in [other State A jurisdiction] and maybe one at [another State A jurisdiction], that the process they use should be the same.

I think uniformity is kind of key. You know, having a centralized branch – basically one director of court operations who – when we meet with them you know – we get the same message that 'this is what we need to do, and here's how you need to do it or here's what you need to do.' [This] makes the best sense to me. You're receiving the same kind of directives that should apply statewide.

I think it's better that [the administrative policies were] coming from one location, generally. I mean, for the pandemic – making sure that we were all on the same page – especially because no one knew what was going to happen [from day to day].

Respondents from state A consistently referred to the value of uniform application of court rules and procedures, and most often did so in the service of court users. Another member of a local court staff in State A posed a hypothetical scenario where two friends were talking at a bar about their divorce proceedings, which were happening in different parts of the state. In this situation, one friend offers advice to the other to go to the courthouse and pick up a particular form. "You know, I feel bad for these two friends who are both getting divorced at the same time, but they can both have access to the same form. So that's good." Such an attitude is more likely to be predicted by a hierarchical account of judicial decision-making. Court actors in states with a centralized administrative structure tended to see the value of policy homogeneity for court users. This perspective thus helps to demonstrate the utility of top-down models of administrative policymaking in state courts.

In states B and C, the utility of relying on centralized authority was much a reflection of the political benefits afforded by leaning on an authoritative source when managing court business during the pandemic, especially when facing other actors within their jurisdictions that might be in ideological misalignment with high court guidance. As examples, three judges who agreed with guidance coming from centralized sources said the following responsive to this theme:

I certainly appreciated the order from [the state supreme court] where they said everybody's got to wear a mask. That was very helpful for me because I was in [a county in State B] where the sheriff said 'I'm not doing it'.

I was grateful for anything that I could use to reinforce the decisions that I needed to make. [I could] simply say 'well, I am following the guidance of the [state] Supreme Court, and no one is going to argue in any courtroom [about that]. If (...) [I say] 'the supreme court has given me this directive and I am following the guidance of the supreme court.' No one can say a word to me that I'm not doing something properly.

If [the state supreme court] would not have given us coverage to be reasonable about [continuances with respect to speedy trial provisions] (...) to have the backing of the supreme court when we say 'sorry defendants, get comfortable,' was very helpful. [Things] would've gone super poorly if they would not have given us coverage.

These quotes suggest that not all actors in decentralized states are interested in exercising authority that may have been otherwise granted to them. When a respondent shared the view that high court or administrative guidance was valuable to them, they not only sought to implement that policy but doubled down by emphasizing the higher authority's policy in order to demonstrate the legitimacy of their own actions. One judge in State B noted in a moment of expected pushback from others in the courthouse: "without [supreme court] guidance, you're going to get a lot more blowback. But when they come to me, I say, 'listen – our supreme court has said we need to do this.' And there's not much they can say in response." In the absence of supreme court guidance, an actor in State C lamented that the reactions from her local government made it difficult for the court to apply social distancing requirements, remarking that "political cover – I think that would've been helpful."

#### 4.1.2. Incentivizing deferral to central authority via the provision of resources

The second theme concerns actors' reflections on the incentives central administrative authorities offered to ensure homogenous application of pandemic policy. The resources were often related to the provision of tech equipment. This theme was most prevalent in States B and C, as central administration in State A doesn't necessarily have to provide incentives to encourage consistency in implementation of policy. Notably, acknowledgement of utilization of state-level grant programs was most often heard in areas of states where court actors tended to disagree with the actions taken by central actors. Despite this, they recognized that following guidance related to remote technology would also afford them an opportunity to upgrade courtrooms and workspaces – upgrades which they could not have undertaken otherwise due to scarce

resources.<sup>13</sup> Some examples from the judges, court administrators, and staff who spoke on this theme included:

...our [local funding sources] were pretty much tapped out on resources, so we were more looking towards the state for funding for technology and things, and the grants that they made available [for technology].

It is true that [the state supreme court] did help all the rural counties [in my jurisdiction] really upgrade a lot of the courtrooms. (...) I'm fully electronic now. While I'm running zoom obviously you need extra monitors and extra things to really help that be efficient so they helped us with the technology upgrades.

I would say I am very happy that the state has given grants and has given money for updating technology. [The state] has given us the opportunity to say 'what could we have?' and 'what could our technology look like?' and even provid[ed] consultants to come in and say 'this is what you need or what you could use.'

These statements suggest that, in addition to ideologically aligned court actors seeking the legitimization afforded by central policy choices, even actors that may have disagreed with the high court or administrator's approach adopted policy in exchange for the provision of resources. Take for example the judge who provided the final quote in the above section. This judge in state B, who stated that it was her "strongly held view that human interaction is far superior to technology-driven action," acknowledged that "there are some people that may think that I'm not progressive, that I'm behind the times." As demonstrated above, this same judge welcomed state funding to upgrade court technology and also ended up sitting on a statewide steering committee to formulate rules about technology. This judge's statements and behaviors are suggestive of another source of unused authority: when resources are scarce, even those court actors opposed to high court directives will adopt them when provided with the means to do so.

#### *4.2. Themes related to perceptions of formal and informal policymaking authority*

Actors across states A, B, and C also identified reasons why they chose to generate their own administrative policy. In State A, these actions were more informal in nature as actors lacked the formal authorization to create policy responsive to the pandemic. The two major themes which emerged were 3) a lack of policy guidance and 4) the mismatch between central policy guidance and local context required local innovation.

##### *4.2.1. Stepping into the policy breach*

This theme concerns actors' perceptions of a lack of guidance from central sources. This view was most common in States B, C and actors in these states perceived that this circumstance required them to use their authority to craft policy which may or may not have been consistent with supreme court or central administrative goals. Here, the distribution of authority to many sources results from perceived necessity – if a policy didn't exist to guide behavior, the actor viewed it was incumbent upon them or others in their jurisdiction to make policy. Statements that reflected this sentiment included:

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<sup>13</sup> Conversely, ideologically distant and wealthy jurisdictions tended to resist attempts made by central actors to apply technological tools consistently across jurisdictions.

They weren't acting quickly enough. [Or] broadly enough. (...) they were taking a very conservative approach in how they were going to provide us with advice.

We [were] stymied by the pace of some solutions. But I would say that we [had] been working on our pandemic plan since (...) right after 9/11 (...) and things progressed rapidly [in the first two weeks of March 2020]. The supreme court – we were constantly asking 'hey, should we be considering closing? Should we be considering requiring masks?' They were always like 'well, that's your choice.'

We had made huge adjustments to equipping our courtrooms – long before the [state's] administrative office had decided that. And that was because our county's IT had told us 'if we don't place an order for the TVs, the video cameras, the zoom licenses early – we might not get it.' So we had all courtrooms equipped before June 1<sup>st</sup>. And the administrative office was just beginning to move on allowing virtual hearings. We'd already decided that.

This theme reveals the grant of authority provided to a diverse array of actors within decentralized court systems: in states where central administrators or high courts have devolved authority to lower courts, it follows that they may not be inclined to weigh in on those issues. In some cases, these actors were interested in the high court's perspective on matters, as demonstrated in the second quote above. Another actor in this state (B) remarked that the high court was "coming from behind." Although this grant of authority is expected in decentralized judiciaries, during the pandemic these actors often reported that they wished the central administrator or high court would've intervened. A member of court staff in state C said, "I wish that during this time period, that they had stepped in and said 'we're the boss of you and here's what you're going to do.' Because nobody knew what to do."

#### 4.2.2. Mismatch between central guidance and local context

The second theme concerns actors' perceptions of the fit of guidance from supreme courts and state administrators to their local context. In States B and C, policy mismatches were often ascribed to central actors' lack of appreciation of the diversity of circumstances within the state. If central guidance was perceived to be ideologically misaligned with the actor's goals, actors in these states were further motivated to ignore this guidance and generate novel policy. This dynamic is expected in decentralized states; local context weighs heavily on actors' behavior. Some examples from the judges, court administrators, and staff in states B and C who spoke on this theme included:

It's potentially politically useful, right, to do things differently. And you know, I'm not saying I really don't believe what I'm saying or doing [in my position], I'm just saying that there's no consequence for doing what I want to do. It could be the other way around – you know – doing more than what's required. You know, making limitations on going to the courthouse more strict than is required.

There has been in our [jurisdiction] a continuing feeling that [decisions about remote vs. in person] should be case by case. You know, or docket by docket. County by county. Because you know we all have very different needs, right, in the different counties. We would like to think we know our population and litigants well enough to understand those needs.

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The [administrative office's] ideas are all well and good but we need to think really carefully about how they apply given our knowledge of how people use our courts and the way that our local courts work.

As noted above, these types of statements are well predicted by a model of local court autonomy. These accounts were often made alongside specific knowledge about a court's local context, with judges, administrators, and court staff speaking about local court capacity (e.g., "we're a uniquely sized court – we're not itty-bitty, but we're not massive. We have [number] of judges and we're self-supported as far as IT goes. This is not always the case in [our state]. We're pretty unique in that way.") and their attentiveness to how the local conditions in their jurisdiction compared to others in the state (e.g., "I would have attorneys come back to [my jurisdiction] and be like 'you know [being remote] has been great: I just went to [another jurisdiction] on a cattle call with thirty people and the person next to me was not wearing a mask and coughing up a storm."), reflecting that "completely different situations" required different types of responses. "We are not a one-size-fits-all state," remarked a court staff member in State C.

We also observe some of this activity occurring, albeit informally, in State A. In State A, actors reported how observations of the needs of people in their local jurisdictions led them to bend the rules or otherwise flout central guidance to support their jurisdiction's population. Speaking about their experience with determining which hearings would be deemed "emergencies" and thus calendared during a time of restricted operations, one member of court staff in State A reflected on her experience in fielding these requests:

I noticed a large number of individuals, like, trying to work around the system. And I don't want to say I helped, but I might have facilitated [scheduling their hearings] knowing what would be heard and what wouldn't.

The type of action described above is not one that an analysis of administrative orders would reveal. The actor in State A describes a step she took to work within existing court policies in order to work around them: by casting a wide net around the state's definition of "emergency," she managed to calendar hearings that would not have otherwise been scheduled. She attributed this action to an acknowledgement of her local context. When speaking about a press conference held by the state's chief justice, where the chief was commending the response of the branch, she remarked: "the chief justice was like, 'the judicial branch never shut down.' It never shut down because of people like me. He didn't have to deal with people who were, like, sobbing. They never see these people." The promulgated policies were not sensitive to local conditions. She commented that "everybody wanted the same thing, it just sometimes came at a different cost to people in some communities."

#### *4.3. Monitoring as a crosscutting theme*

Attentiveness to monitoring – and the administrative apparatus's ability to force compliance if policy actions were deemed too deviant – was present in responses as both an acknowledgement of the hierarchy's ability to restrict action (most often in the case of state A) as well as of its powerlessness to do so (solely in the case of states B and C).

As was illustrated in the quote related to informal policy change regarding "emergencies" in State A described above, actors in this state often reported feeling

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incredibly frustrated with their inability to fit policy to their local context. Even still, they tended to abide by the central office's choices for fear of sanction. In one situation, another actor from State A was party to a policy deviation meant to serve her local community. It was soon caught and addressed by the central office:

...it was frustrating for us here trying to help [people on the domestic docket]. So we wanted to try and [assign people hearing dates at a time when hearings were postponed indefinitely]. The [managing] judge did speak to everybody – the court reporter, the clerk, the marshals – and said 'we're going to try and open up a little bit.' Um, [the central administrator] found out and the [managing judge] got a phone call saying 'you're not allowed to do that.' So we were told that we could not, you know, do that. And we have to do what we're told, because they're going to find out in the end. And, you know, that is what you have to do. They are going to find out about that and you don't have any autonomy to say 'we're suited for that' so that's what we're going to do.

In State A, there are few instances of such departures from the central administration's directives. It was more often the case that court actors in State A abided by decisions made at the top of the hierarchy. Occasionally, actors from State A provided examples of preempting sanctions by asking the central administration for permission to do something. One court staff member remarked, "if we couldn't handle it, whatever it was, you know I'd reach out [to the central office] and boom we would have a new poster, a new sign, a new directive you know, that was consistent with what [the central office] was already promulgating."

In the case of states B and C, the central authority's impotence was often cited as a justification for taking control and making jurisdiction-specific policy choices about how to use remote technologies, manage court documents, and direct the work of remote and in-person court employees. Statements like the following were common among judges, court staff, and administrators in these states:

There's no consequence. You know, like, no one ever tells me 'yeah, you're doing a good job at that or you're not doing a good job. Or anything.' This is like 'nothing.' So if there's no consequence to you just doing your own thing, then yeah. You can develop like a really local way of doing your job.

The only time they find out somebody's doing something wrong is when they read about it in the paper. I mean, I cannot tell you the last time a member of the administrative office was in our [courthouse]. We haven't had a director [of the administrative office] visit us in thirty years.

There was nothing in the [guidance from the state supreme court] that said we could do that. Yeah well, there was nothing in [there] that said we couldn't. And that's why we did [what we did].

It was very common for actors in states B and C to perceive little constraint in their exercise of authority and this often was expressed through an acknowledgement of local autonomy. Even when guidance came from higher authorities, "people just ignored it" according to one judge in State B. She went on to say that when policies lack "teeth, you know, or enforcement – in the end the [jurisdictions] just did what they wanted to do." Such statements demonstrate the utility of the local control model. Actors in decentralized systems perceive a great level of authority to sidestep high court or administrative actions. In spite of this recognition of the "long road to be disciplined for

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non-compliance,” in the words of one actor in state B, ideologically aligned actors and those in resource-strapped jurisdictions seek to adopt central actors’ policies.

## 5. Discussion

This paper advocated for an integrated model of the administrative choices made by court actors, combining insights from a hierarchical model driven by court structure and a local control model driven by local court context and ideology. Traditionally, these approaches have been developed by scholars interested in questions of courts’ adjudicative and administrative functions, respectively. This paper developed an account of administrative policymaking authority that considered the mechanisms which drive actors in centralized states to deviate from higher authorities and actors in decentralized states to conform. Such dynamics would be poorly explained by relying solely on the top-down or the localized account of authority.

This paper contended that these dynamics would be difficult to observe absent an interview-based approach to data collection. Such a method is incredibly valuable when a study is focused on questions related to individuals’ attitudes or behaviors. With respect to the utility of interviews over surveying or observation, I follow in the footsteps of many other scholars who have used elite interviewing to compare the perspectives of participants in decision-making processes across different political contexts in subnational governments (see e.g., Beamer 2002). I relied on a semi-structured approach because of the flexibility it affords the researcher in probing and extracting additional relevant themes. Despite the unprecedented challenges to conducting in-person interviews during the pandemic, the rapid adoption of communication technologies by the study’s target population made technology-mediated interviewing a viable alternative to in-person interviewing.

The interviews revealed that a variety of people in different roles across court hierarchies contribute to crafting administrative policy. The actors who were able to participate in policymaking depended on structural/hierarchical allocations of authority. Structurally speaking, court actors in decentralized systems often chose to act upon the policymaking authority allocated to them by their judiciary’s organizational structure: both out of necessity when policies did not exist and out of disagreement when high court guidance did not conform to their ways of working in their jurisdictions. In centralized systems, the court’s administrative structure withheld a lot of formal policymaking authority from court actors. Consequently, there was not much formal policymaking activity interjurisdictionally in this state.

Although actors varied in the formal authority bestowed upon them by their system’s design, respondents in both systems exhibited behavior that cut against the utility of considering either model of behavior in isolation. In addition to the ways their structural context empowered or constrained formal action, court actors were incentivized to innovate (or conform) according to: the political and practical utility of relying on central authority, the resources central actors provided, the perception of a lack of guidance, and judgements regarding the (mis)alignment between the choices of central authorities and the actor’s jurisdictional context. Ideological alignment and the proffering of resources incentivized reduced policy activity on the part of decentralized actors while

ideological misalignment incentivized creative attempts to informally circumvent central orders among actors in the centralized state.

The decision to centralize or locally distinguish administrative policy in courts has important implications for how scholars understand the role of courts and their relationship to the populations they serve. Centralizing decision-making about court processes can provide uniformity for court users, making it easier for them to navigate the court system. However, courts often serve diverse populations and have varying capacities to handle cases efficiently and effectively. This raises important normative questions about the trade-offs between uniformity and local adaptability in the design of the administrative functions of a legal system. The design of these policies, and the distribution of power within a judiciary, can have a significant impact on individuals' access to justice.

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