

Show Trials: The Immigration Court System & Potential Reforms

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How We Treat **People** in Court
Systems & How We Treat **Property**

Property Scenario of Pop Icon Katy Perry: The Court System's Policy



Why?

- “Judgment by default is a drastic step appropriate only in extreme circumstances; a case should wherever possible be decided on the merits.”
- “look with disfavor on those who try to take advantage of mistakes, neglect”
- *California Supreme Court; Federal Appellate Court, Ninth Circuit.*

Immigration Court Systems and People



Traditional Federal & State Courts

Property/Criminal Defendant rights	
Neutral Article III Courts	Yes
Judges, Transparent Vetting	Yes
Right to Appeal	Yes
Right to a lawyer when liberty is at issue (criminal)	Yes
Right to legal fees if rights violated (property)	Yes sometimes
Right to attend mediation to settle?	Yes
Right to have case decided on merits at nearly all costs? Fairness>Efficiency	Yes

Immigration Court

Executive Controlled, not Judicial Branch.

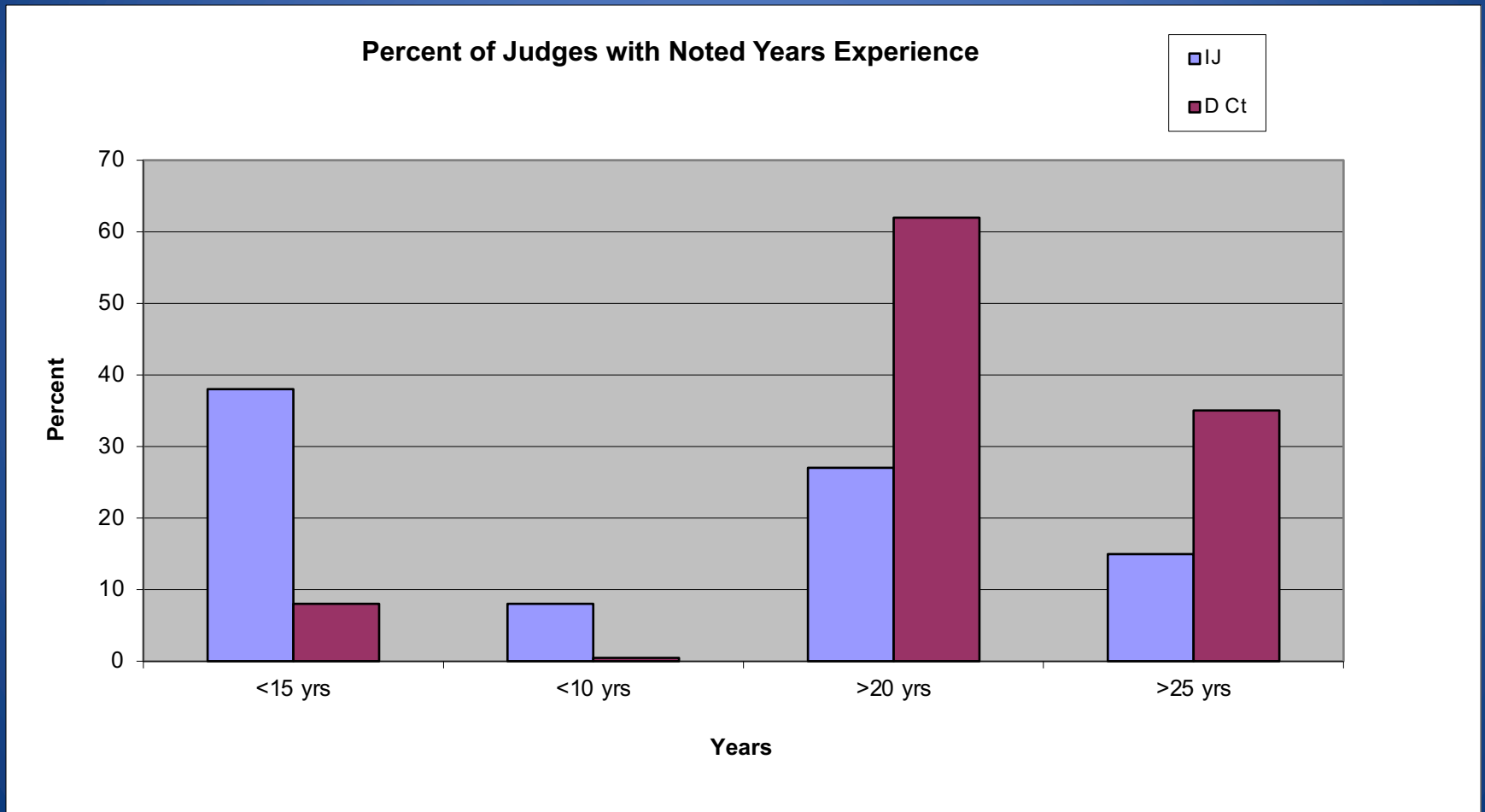
- No public vetting process – Sunlight, Politics.**
- 7 years, not even immigration experience vs. small claims.**
- if too liberal can be fired. Great Purge.**

Judges

Prior Judicial Experience

- Almost 50% district court judges have prior experience, less than 10% of IJ's do.
- 5x multiple.

Judges: Years of Experience



Judges: Reversal Rate Data

- On average over 2000-10, 2x more than district judges.
- In some years 4x more.

Appellate Process

- Value in federal system: patents and other disputes. Examples.
- In large swath of cases, no right to appeal to Article III court starting in 1996.
- Hardship (cancellation) decisions touch on liberty questions of long-standing community members and citizen children. Examples.

Right to Lawyer

- 60% pro se/40% with counsel.
- No right to state appointed lawyer to defend in the deportation process.
- Irrespective of whether alien is detained or not.
- Irrespective of whether it is a political asylum seeker facing risk of harm-death if returned.

Prevailing Party Right to Fees?

- No.
- *But see* Copyright Act, § 1983, Trade Secrets
- Carrot-Stick.

The Lawyers

- Immigration lawyers sanctioned 10X more than non-immigration lawyers before Ninth Circuit.
- Government lawyers cannot be sanctioned but private lawyers can.

Mediation

- Ancient process & current process in traditional courts.
- Immigration example; civil court example.

The Reality

	Property/Criminal Defendant rights	Immigrant Rights in Immigration Court
Neutral Article III courts?	Yes	No
Judges, transparent vetting process?	Yes	No
Judges, comparable on reversal rates, prior experience?		
Right to Appeal?	Yes	No
Right to a lawyer when liberty is at issue?	Yes	No
Right to legal fees if rights violated	Yes sometimes	No never
Right to attend mediation to settle?	Yes	No
Right to have case decided on merits at all costs?	Yes	No

Reforms – Big Picture

- Each court system adjudicating *constitutional* rights.
- “Meticulous care”
- Gap between procedural justice rights in our property court and our immigration court.

Reforms – Court & Judiciary

- New Article III court or at least Article I bankruptcy analogue court
- Solves transparency, vetting issues
- Decouples politics of hires
- Should lead to better quality as seen in reversal rates and experiential profile of bench
- Trade efficiency-utilitarianism for accuracy-fairness.

Reforms – Mediation

- Works for property and criminal cases.
- Works for international disputes.
- Should it be used for people in immigration?

Reforms – Attorney

- Right to fees for prevailing party – carrot & stick.
- Equalize sanction power against all attorneys

Reforms – Right to Appeal

- Basic right.
- Federal Circuit (patents).
- 1996 Repeal of right to seek higher court review on certain questions.

Conclusion

- Property rights system works
- By and large these are procedural rights as a means to fairness-justice.
 - Mediation
 - Right to Counsel
 - Right to Appeal
- *How it ended for Katy Perry and Mr. Wang...*

