POLICY PREFERENCES, PRESIDENTIAL APPOINTMENTS, AND LONG-TERM INFLUENCES ON THE FEDERAL COURTS OF APPEALS

by

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(Under the direction of SUSAN B. HAIRE)

ABSTRACT

The United States Courts of Appeals decides thousands of cases each year and is rarely overturned by the U.S. Supreme Court. As these judges possess life tenure, appointments provide presidential administrations with a significant opportunity to influence, at least indirectly, public policy for decades after the president leaves the White House. This dissertation examines this possible presidential influence in four ways. First, in examining appointee tenure, this dissertation finds that those administrations that specifically consider the age of the appointee are generally successful in selecting judges that serve for longer periods than those administrations that apply an age-neutral approach. Second, in examining the abilities of presidents to influence the composition of the courts' personnel, presidents have been very successful in creating or strengthening their party's majority presence on the bench. Five out of seven administrations that had the opportunity to shift the partisan majority of judges on the circuits were able to do so. In the individual circuits, presidents create a new majority for their party in about two circuits per four-year term. Presidents are also able to create circuits with a majority of their own nominees at the rate of about two circuits per four-year term. A presidential-cohort majority will generally be maintained for about six years after the president

leaves office. Third, using logistic regression, this dissertation finds that appointees behave in ideologically consistent ways with the appointing president's policy preferences, particularly in the first decade of their careers. This means that the more liberal the appointing president's preferences are, the more likely their judicial appointees will support liberal case outcomes, at least early on in the judges' careers. Lastly, this dissertation examines voting records of the Carter Administration's appointments and finds that the Carter appointees are among the most consistent in their voting behaviors in civil rights cases overtime. These findings suggest presidents have a significant opportunity to shape the courts and the public policy that stems from those courts. Depending on many factors outside of the president's control, an administration can expect to influence the circuit courts for about a decade after they leave office.

INDEX WORDS: U.S. Courts of Appeals, Appointments, Judges, Presidential Powers, Circuit Courts, Nominations, Federal Courts

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TABLE OF CONTENTS

CHAPTER I

INTRODUCTION

In June of 2003, a three-judge panel from the Ninth Circuit Court of Appeals issued a ruling that involved one young student, one school district, and a recited statement that takes less than ten seconds to complete. In reality, only two individuals actually issued the binding opinion, as one member of the panel dissented. Further, the opinion concerned only two spoken words that took up only about one second's worth of the school day. In the "big picture" world of United States' politics, one would imagine that a decision involving one second of a school day and two spoken words would be rather insignificant. Further, in our system based in majority rule and legislative compromise, most would consider a decision emanating from only two individuals, neither of which is the president, to be fairly unimportant. One would think this case would be decided in obscurity, largely out of the public's eye.

However, this case, just like many decided by the lower courts, did not go unnoticed. In fact, the Ninth Circuit's 2003 ruling that the phrasing "under God" in the Pledge of Allegiance violated the Constitution[1] created a storm of controversy across the nation (Collins 2004). While some groups applauded the case as protecting society from the government's establishment of religion, others strongly criticize the decision as unpatriotic and that it ignored the foundations of the nation. While a decision either way may have been controversial, this decision focused national attention on not only the Pledge of Allegiance, but also on the general role of the courts, politics, and religion. For example, reacting to the Ninth Circuit's decision, the U.S. Senate

[1] *Newdow v. United States* Congress, 292 F.3d. 597 (9th Cir. 2002) *amended by* 328 F.3d 466 (9th Cir. 2003).

voted ninety-nine to zero in favor of the "under God" phrasing (Reaves 2002). Adding to this debate was the fact that Judge Alfred Goodwin, a Nixon appointee, wrote the majority opinion. This seemed contradictory for a Nixon appointee, as Nixon implemented a clear agenda aimed at nominating conservative judges and justices to offset what he viewed as the liberal decisions of the Warren Court (Goldman 1997). However, Nixon appointed Goodwin to the Ninth Circuit Court of Appeals in 1971, and Goodwin wrote this opinion over two decades after his appointment to the bench and years after President Nixon left political office.

Although it did not rule on the merits of the Ninth Circuit's decision, in this instance the U. S. Supreme Court did agree to hear this case.[2] However, the Court's decision to grant certiorari in this case is the exception to the general rule. Thousands of cases decided in the U.S. Courts of Appeals never make it to the High Court for review. For example, in 1992, the U.S. Court of Appeals for the Seventh Circuit decided that the "under God" phrasing was constitutionally permissible.[3] Unlike the Ninth Circuit decision, the Supreme Court declined the opportunity to review this case, just as it declines to review the vast majority of cases. In recent years, the United States Supreme Court has given its full attention to less then one-hundred cases per term (Segal and Spaeth 2002). With discretionary review and control over its own dockets, the number of opinions issued by the Supreme Court has decreased over several decades, even though the requests for review of lower court decisions have sharply increased. Conversely, the Federal Courts of Appeals, also called the circuit courts, lack discretionary review (Cohen 2002; Klein 2002). Further, the number of cases appealed to the circuits has dramatically increased in recent decades (Songer, Sheehan, and Haire 2000). For example, in 2006 over 67,000 cases were terminated in the circuit courts collectively, with over 34,000 of these being decided on the

[2] *Elk Grove Unified School District v. Newdow*, 124 S.Ct. 2301 (2004).
[3] *Sherman v. School District 21 of Wheeling Township*, 980 F.3d. 437 (7th Cir. 1992).

merits (Administrative Office of the U.S. Courts 2007). While many of these cases may have been decided very quickly or even dismissed on procedural grounds (Songer, Sheehan, and Haire 2000), many of them can have substantial policy implications. Given the decreased number of cases reviewed by the Supreme Court, the vast majority of these circuit cases remain intact (Davis and Songer 1989). One estimate suggests that 99.7 percent of all circuit cases are never overturned (Songer 1991). Thus, it is clear that the judges deciding these lower court cases can significantly shape public policy through court outcomes.

The Ninth Circuit's case concerning the *Pledge of Allegiance*, like many other cases, shows that decisions made by unelected, lower-court judges may have important consequences and spark nationwide policy concerns. The fact that judges are not subject to popular vote and have life tenure has caused concern for some citizens, scholars, and even elected officials. Commenting on the Carter appointments, Senator Orrin Hatch voiced his distress in a 1981 interview: "We have a bunch of federal judges running the country who have not been elected but who are substituting their own political values in many ways" (*American Enterprise Institute* 1981, 12). The fact that these judges may serve long terms fuels the fear that a countermajoritarian institution may thwart the democratic process. Given that these judges may influence policy within their circuits and even affect public policy and opinion nationwide, it is important to examine the influential actors in the appointment process. Once circuit judges are appointed, they are relatively free to decide cases as they wish, while serving under good behavior, with only a mild threat that the Supreme Court will overturn their decisions (Klein 2002). Impeachment is the only means by which a judge may be removed after confirmation, but this, too, may be a slight or even insignificant factor in a judge's behavior, given the low number of actual impeachments. Only seven judges have been removed through the

impeachment process in the entire history of the federal judiciary (Van Tassel 1993). Since the appointment process serves as a significant check on the judiciary, it is important to examine what influence the actors in the process, particularly the president, may have on the future of the courts and the decisions they make. If those that are involved in the selection process can influence who is chosen to be a judge, then those actors may, at least indirectly, influence public policy as long as that judge serves on the court.

The Ninth Circuit's decision concerning the *Pledge of Allegiance* as well as the thousands of other cases decided each year by the circuit courts raise two interesting puzzles. First, are presidents able to shape public policy on these courts through their appointment powers? Second, if presidents indeed have this power, is this ability to shape public policy long lasting? If Judge Goodwin or any judge consistently decides cases that are contradictory to the appointing president's ideology, it raises questions such as did the appointing president make an unwise choice from the beginning or do judges' behaviors change over time? Examining a sample of Judge Goodwin's opinions appears to support the latter proposition. In his first ten years, Judge Goodwin strongly supported the conservative position, voting conservatively eighty-six percent of the time. However, after ten years on the bench, Judge Goodwin appears more open to the liberal position, as he supported conservative positions in sixty-two percent of the cases, over a twenty-percent drop from his earlier voting behavior. While this cursory examination of a sample of only one judge's voting record cannot provide a full assessment of presidential success in nominating judges, this dissertation attempts to more fully explore this puzzle. By examining a president's ability to shape the courts and examining appointees' behaviors over time, we may gain insight into the long-term influence that presidents may

possess over the judiciary and, therefore, assess the presidential influence over judicial policymaking.

Clearly, the president possesses many tools in which he or she may influence public policy. The Framers of the Constitution provided policy-making powers by explicitly granting the president numerous responsibilities including the power to make treaties, serve as commander-in-chief of the armed services, and appoint executive officers. The president also possesses many tools outside of the expressed powers that may be used to influence public policy. For example, the president may use his or her abilities of persuasion and negotiation to influence members of Congress to support or reject a certain bill or policy (Neustadt 1990). A president's policy influence may vary by issue and other situational factors such as his partisan support in Congress (e.g. Fleisher et al 2000; Fleisher and Bond 1988; Wildavsky 1966; Yates and Whitford 1998). Aside from these limitations, all of these powers are also generally limited to the time a president actually remains in office. While an executive order or a statute passed during a president's term has the possibility of becoming public policy for an indefinite time, that executive order or statute may be changed by a subsequent presidential administration. In other cases, future federal executives may simply ignore a policy created by a prior administration. For example, President Reagan's election in 1980 signaled an end to several programs initiated under the Carter Administration. This meant that all of the prior administration's programs and initiatives, from ignoring Carter's negotiations over Intermediate-Range Nuclear Forces (Deibel 1989) to removing solar panels placed on the roof of the White House (Eizenstadt 2007), were subject to being changed. Just like all presidents, once Carter left office, it was up to the subsequent president to adhere to, disregard, or substantially change the previous administrations' policies.

However, one area in which presidents may be immune from future administrative interference is through their judicial appointments. With life tenure and very few instances of impeachment (Carp, Stidham, and Manning 2004; Van Tassel 1993), appointments provide presidents the possibility of unfettered policy influence, at least through an indirect means. Presidents themselves are cognizant of their potential influence over the judiciary. President Harry Truman once commented, "The appointment of Federal judges is the most important thing I do. They will long outlast my tenure of office and if they do the right thing the people benefit by it" (Goldman, 1997, 76). Just as the president may have persuasive powers to influence Congress, the ability to select judges provides the president with a clear opportunity to affect another branch of the federal government and forward his or her own policies. Presidents may be able to set the agenda of the courts by selecting individuals who will reflect the president's preferences and values through case decisions (e.g. Giles, Hettinger, Peppers 2001; Goldman 1991; Segal and Spaeth 2002). As noted by one White House aide concerning judicial appointments, "the decision as to who will make the decisions affects what decisions will be made" (Maltese 1995:3).

While Presidents as far back as Theodore Roosevelt have been credited with using judicial appointments to foster policy goals (Solomon 1984), more recent presidents have become very open about setting the agenda through the types of individuals they plan to appoint, even using judicial nominations within their election platforms. For example, while President Jimmy Carter pledged to continue his efforts to diversify the federal bench during the 1980 election (Goldman 1997), candidate Ronald Reagan promised to support judicial nominees that were pro-law enforcement, pro-life, and pro-school prayer (Segal and Spaeth 2002). While a possible rallying point for candidates during times of elections, nominations have also been a

means by which political opponents have attacked presidential candidates. For example, President Clinton came under harsh criticism during the 1996 campaign by Republicans who suggested that his lower court appointees excessively favored defendant's criminal rights and that his appointees were against the freedom of religious expression (Goldman 1997).

Therefore, an important aspect in the study of both the presidency and the judiciary involves examining these appointments and their long-term consequences. Chapter II examines the prior research concerning presidential influence on the courts through the appointment process. Chapter II argues that a key limitation in the prior research is that there has been little examination of the presidents' long-term influences over the courts. Particularly at the circuit court level, few studies have assessed the effects of presidential policy preferences, judicial behavior, and variations over the judges' tenures. Examining a president's long-term influence is a key facet in determining whether a president may impact public policy long after the president is out of public office.

To assess this gap in the literature, this dissertation will examine long-term presidential influence over the courts in four ways. First, this dissertation examines the longevity of circuit court appointees to determine if some presidents are successful in appointing judges that remain on the court for longer periods than other presidents. If a president can appoint judges that remain on the courts for longer periods, then those judges will obviously have the opportunity to decide more cases over time and thus provide presidents more policy influence through the power of judicial appointments. Chapter III examines the age of judicial appointees at the time of their confirmation from Presidents Franklin Roosevelt to George W. Bush. Then, Chapter III examines the longevity of appointees' service beginning with those named by Franklin Roosevelt and ending with those appointed by President Bill Clinton. Goldman (1997) finds evidence that

some presidential administrations specifically target younger judges who will serve on the court for longer periods. Chapter III will uses Goldman's analysis to determine if those administrations that consider age during the nomination process are more successful in selecting appointees that remain on the court for longer periods.

Second, Chapter IV examines a president's ability to shape the partisan compositions of the circuits and their ability to stack the circuits with their own appointees. If presidents can influence the partisan composition of the circuit courts and create strong majorities for their own party, then they can greatly influence the partisan make-up of the three-judge panels (Velona 2005) and *en banc* hearings. These partisan changes may have important policy consequences, as prior studies show that Democratic judges generally support outcomes that are more liberal than Republicans, who generally support conservative decisions (e.g. Goldman 1975; Rowland and Carp 1996; Rowland and Todd 1991; Songer and Davis 1990). Further, if presidents are able to appoint pluralities or even a majority of the judges on a particular circuit, then those appointees may also sway judicial decisions on specific policies important to the administration. However, Chapter IV also examines the factors that may limit a president's ability to shape court personnel. These factors may include the composition of the circuits when the presidents begin their terms, the rate of judicial turnover, and the length of service for the president. Congress can also play a major role through the creation of new judicial positions, as almost all presidents during this study's time frame were able to appoint judges to newly created circuit court positions. Chapter IV will examine the president's ability to shape the partisan composition of the circuit court bench, collectively, and the partisan make-up of each individual circuit. Chapter IV will also examine the president's ability to create majorities of their own appointees both on the courts of appeals bench as a whole and within the individual circuits.

However, the ability to select judges that remain on the court for long periods and the ability to shape the personnel composition may provide only limited policy influence if the appointees' behaviors are incompatible with presidential policy goals. Therefore, as a third means of examining presidential influence, Chapter V examines the long-term voting behaviors of judicial appointees and their relationship to presidential policy preferences. Chapter V will use logistic regression models and data from the Court of Appeals Database (Songer 1997), to determine if judicial appointees' behaviors are ideologically consistent with presidential policy preferences. Chapter V will utilize three different measures of presidential policy preferences and examine these relationships using different time frames to provide a better understanding of a president's long-term policy influence through the courts.

Finally, Chapter VI examines the president's potential impact on a specific issue area by exploring the Carter Administration's nomination strategies and the specific voting records of the Carter circuit judges on civil rights issues. Using the papers from the Carter Presidential Library, Chapter VI examines the influences on several of the Carter appointments, including the creation of the circuit nominating committees, Carter's emphasis on diversity, and outside influences such as pressure from senators, party members, and interest groups. In examining the voting behavior of President Carter's circuit court appointees on civil rights issues, Chapter VI attempts to determine, given Carter's policy emphasis on affirmative action and other civil rights issues, whether the Carter judges voted consistently on these issues as compared to other presidential cohorts.

The examination of a president's influence over the circuit courts is in essence an examination of power and authority. If the president is able to influence the circuit courts and the judiciary as a whole, this creates a dramatically different dynamic than the independent

judiciary envisioned by many of the Framers of the Constitution. Not only do nominations provide a means of direct and immediate influence over one branch by another branch, but it may also provide the president a means to influence public policy decades after they leave office. Given the high number of judicial decisions rendered by the circuit courts, the rare number of circuit decisions that are even reviewed (let alone overturned) by the Supreme Court, and the potential longevity of judicial appointees, this dissertation is important to our understanding of the policy implications that presidents may have through the nomination process. This raises clear concerns or at least calls into question issues about the countermajoritarian nature of unelected, life-tenured judges making influential policy decisions. Therefore, this dissertation attempts to shed more light on these issues of high political and policy interest.

CHAPTER II

PRIOR ASSESSMENTS OF PRESIDENTIAL APPOINTMENT EFFECTS

A president may have several goals in mind when appointing judicial nominees. Sheldon Goldman (1997) suggests that there are at least three specific goals: partisan agendas, personal agendas, and policy agendas. First, presidents may grant appointments to increase their own or their political party's power. For example, President Kennedy appointed many former allies of Adlai Stevenson to the bench to rebuild support after a difficult Democratic primary (Chase 1972). Second, presidents may use their nominations to reward personal friends and long-time associates. For example, President Truman awarded several judgeships to close friends and allies, even though other members of the Democratic Party did not always support those appointees (Goldman 1997, 68-72). Lastly, Goldman (1997) suggests a president may attempt to foster a policy agenda, thus attempting to influence public policy through their appointments to achieve substantive policy goals. While achieving a personal or partisan agenda may provide the president with some long-term influence over judicial decisions, succeeding in policy agendas could potentially give the president at least an indirect influence over public policy for generations after they leave the White House. This would provide the executive branch a clear opportunity to achieve policy results and set the agenda of the courts by selecting judicial appointees with views that will reflect the president's preferences (e.g. Giles, Hettinger, Peppers 2001; Goldman 1991 Segal and Spaeth 2002;). As one White House aide noted,

> [T]he role the judiciary will play in different historical eras depends as much on the type of men who become judges as it does on the constitutional rules which appear to [guide them] (Maltese 1995, 2-3).

Most would agree that a president "will want a Court that shares his ideology and thus [he] will nominate someone who will bring the Court closer to his preferences" (Moraski and Shipan 1999, 1071). Especially since the later decades of the twentieth century, presidents have become more open about using their judicial nomination powers to foster their policy preferences and about setting specific policy criteria as a standard for judicial appointments (Goldman 1997; Rowland and Carp 1996). If presidents indeed use lower court appointments to foster substantive policy goals of the administration, then they possess the ability to influence public policy through the courts possibly long after they leave office.

Empirical research at different levels of the judiciary indicates that presidents have been generally successful in achieving presidential policy goals. Initial studies of judicial behaviors examined the party of the appointing president and its relationship with judicial behaviors. In general, these studies found that judges appointed by Democratic presidents favored more liberal outcomes than did judges appointed by Republican Presidents (e.g. Goldman 1975; Rowland and Carp 1996; Rowland and Todd 1991; Songer and Davis 1990). For example, Rowland and Carp (1996) found clear differences among presidential appointees in the district courts, with Democratic judges generally supporting more liberal positions, particularly in certain issue areas. In examining the U.S. Supreme Court, Tate and Handberg (1991) found partisanship influenced judicial voting in civil liberties cases, civil rights cases, and in economic cases, even after controlling for other factors. Tate and Handberg (1991) also found statistically significant effects for their appointing president variable that, although scaled somewhat differently, closely approximated partisanship. When examining the circuit courts, Songer and Davis (1990) found voting behavior differences among Democratic and Republican judges in four issue areas: labor cases, criminal cases, civil rights cases, and First Amendment cases. Democrats were

statistically more likely to support liberal outcomes in these issue areas than were Republicans. As presidents overwhelmingly nominate members of their own party for circuit court judgeships (Barrow, Zuk and Gryski 1996; Goldman 1997), using either the partisanship of the judge or the appointing president's partisanship has been shown to be an acceptable predictor of judicial behaviors and thus provided an early way to examine presidential influence on the courts. These prior studies provide some sense of a president's ability to influence the circuits, since a president's ability to appoint more judges of a certain party may influence decisions on the courts.

However, there are several problems using partisanship alone to examine a president's success in achieving policy agendas. For example, one study found that President Carter's appointments to the federal court were much more liberal than appointments by previous Democratic presidents (Gottschall 1983). Other researchers found that President Reagan's lower court appointments were more conservative than other Republican presidents' appointees (Songer and Haire 1992). Therefore, treating all Democratic or all Republican presidents as having the exact same ideology may misrepresent the ideological concordance between the president and court outcomes and under or overstate the president's policy influence.

To overcome these issues, other studies examining the judiciary have examined presidential cohorts in empirical modeling. These studies generally entail creating a set of president variables valued at zero or one for each judge. A one, "1," would be coded for the president that appointed the judge while all other president variables would be coded a zero, "0," with one presidential variable being left out of the model to serve as a base term (see Gujarati 2003). In her extensive examination of lower court appointments and voting behaviors, Scherer (2005) theorized that elite mobilization and a conscious intention from presidents to appeal to

certain groups through presidential appointments has lead to an increase in policy-driven judicial nominations. Her comparison of judicial cohorts' since the Nixon administration provides support for presidential appointee differences in cases dealing with such issues as searches and seizures, civil rights, and privacy issues, although the differences were not always consistent. In their examination of obscenity cases in the circuit courts, Songer and Haire (1992) also found several differences based on the nominating president. In the criminal context, one study examining lower federal court appointments by Presidents Nixon, Carter, and Reagan found that President Carter's appointments tended to support criminal defendant rights more often than President Reagan's appointments (Rowland, Songer, and Carp 1988). Examining district court appointments, Rowland and Todd (1991) found that Reagan appointees were more likely to deny standing, thus dismissing the claims, of those parties often portrayed as "underdogs," such as individuals and criminal defendants, than were Nixon and Carter appointees.

A recent trend in examining the relationship between the appointing president and the voting behaviors of circuit judges has been to use some measure of presidential preferences to determine whether those presidential preferences have a relationship to judicial voting behavior. This method has its advantages over using partisanship or cohorts. As for partisanship, using a presidential preference measure allows for a deeper analysis of the differences between the administrations. Using only partisanship may not allow researchers to test the difference between a president's success in fulfilling, in Goldman's (1997) terms, a partisan agenda or a policy agenda with their appointments (Giles, Hettinger, and Peppers 2001). Further, instead of determining just that an Eisenhower appointee is less likely to support civil liberties than a Reagan appointee, as a cohort analysis allows, a model with variables for the president's preferences can test these relationships on a continuum while controlling for other factors. In

addition, unlike a cohort analysis that forces a researcher to compare the presidential cohorts to a base term (Gujarati 2003), using a presidential preference variable allows comparisons based on the preferences of the president's themselves.

One recently used measure of presidential policy preferences is the set of common-space NOMINATE scores (Poole and Rosenthal 1997). These values were originally designed to study Congress and are based on roll-call votes. The values of these measurements are comparable across different terms of Congress. More recently, NOMINATE scores have been created for presidential administrations based on the positions taken by the administration on congressional legislation, as assessed by Congressional Quarterly (Poole and Rosenthal 1997; McCarty and Poole 1995; Poole 1998). Recent studies of the courts began to utilize these measures to examine the relationships between presidential preferences and judicial behaviors. Using NOMINATE scores (Poole and Rosenthal 1997) as a measure of presidential liberalism, Giles, Hettinger, and Peppers (2001) found that presidential policy preferences matter in circuit votes on civil liberties cases. The more liberal the appointing president, based on NOMINATE scores, the more likely their appointees would support liberal outcomes. This positive relationship remained statistically significant even after controlling for such factors as state-political elite preferences and contemporary Supreme Court liberalism. Songer and Ginn (2002) found a similarly strong relationship between the president's policy preferences and judicial behaviors using presidential NOMINATE scores. This analysis utilizing a random sample of circuit court cases from 1960 to 1993, found this presidential effect even after controlling for the preferences of the Senate.

Another recently developed measure of presidential policy preferences stems from the research of Segal, Timpone, and Howard (2000). In their study of the Supreme Court, the

authors surveyed members of the Presidency section of the American Political Science Association and asked these experts to rate the presidents' liberalism on a one-hundred point scale (Segal, Timpone, and Howard 2000, 560-561). Using the averages of these survey responses, the authors found support for ideological concordance between the appointing president's policy preferences and judicial behaviors, although this concordance did not appear constant over a judge or justice's careers. Thus, those presidents with higher liberalism ratings generally appointed Supreme Court justices that were more likely to support liberal outcomes, at least in the early parts of the judges' careers. In the context of circuit courts, Kuersten and Songer (2003) found similar results using the Segal, Timpone, and Howard (2000) presidential preference scores. In their analysis of both economic liberty cases and civil liberty cases, the authors found that the more liberal the appointing president's rating, the more likely their circuit court appointees would support liberal outcomes (Kuersten and Songer 2003).

While these prior studies make important contributions to the discipline, few prior studies examine the long-term influence of presidential nominations, such as the longevity of appointees, the ability to significantly influence the partisan and ideological composition of the circuits, and if policy concordance between the president's policy preferences and judicial behaviors remains consistent over time. Although these studies find a close relationship between presidential ideology and the voting behaviors of the appointees, conflicting theories suggest a president's long-term ability to influence the courts may be limited. Dahl (1958) suggested that turnover and the appointment process will keep the courts' relatively close to the views of the ruling majority. While this would prevent the judiciary from becoming a countermajoritarian institution, it may also prevent a president from successfully 'stacking the courts' with like-minded judges who would influence public policy for significant amounts of time. Others

suggest that circumstances occurring during the nomination process may further limit a president's ability to appoint their ideal candidates for judicial positions. For example the Senate, particularly the senators from the state where the opening occurs, may have a limiting effect on the president's abilities to appoint their ideological equals (Giles, Hettinger, and Peppers 2001; Songer and Ginn 2002). Traditionally, for an opening on the circuit courts, the newly appointed judge and the departing judge would be from the same state. This concern over geography was based on maintaining fair proportions of judges from each state within the circuit (Hettinger, Lindquist, and Martinek 2006). For example, when filling a Ninth Circuit vacancy, the Carter Administration limited their search to potential nominees from Alaska based on the perceived geographical imbalance based on state members in the circuit.[4] This concern over geographical balance provides the senators of the states where the opening arises a wide degree of latitude in influencing who is nominated to the opening (Carp, Stidham, and Manning 2004, 134). For example, the policy of the "blue slip" gave the senators from the state where the opening originated a near veto power over judicial nominees from their states, particularly when the senators were of the same party as the president (Goldman 1967). Recent studies have suggested that a relationship may exist between the home-state senators ideology and the decisions that those appointees make (Giles, Hettinger, and Peppers 2001; Songer and Ginn 2002). Therefore, members of the Senate may limit the president's ability to appoint their ideal nominee and thus limit the president's policy influence through nominations. Further, even if the president can stack the courts and is able to appoint judges who share the president's policy goals, it is possible that appointees' preferences will change over time, possibly moving away from the president's goals (Baum 1992; Epstein et al 1998; 2007). Therefore, it is important to

[4] Memo, Michael Cardoz to Lloyd Cutler, 2/7/1980, "Judges 1-5/80," Box 96, Staff Office Counsel (Cutler), Jimmy Carter Library.

examine not only if the president may have the opportunity to influence the courts through appointments, but also whether any changes will be long lasting.

One study that does examine a president's long-term influence over the courts appears to support Dahl's contention and possibly the contention that other factors may limit the president's long-term impact on judicially created public policy. In examining the Supreme Court, Segal, Howard, and Timpone's (2000) study used expert ratings of presidential liberalism and examined voting behaviors over time. Using a Supreme Court justice's overall voting behavior as its dependent variable, this study divides the data into career periods and examines the ideological concordance between the president's policy preferences and judicial voting during certain periods in a justice's career. The authors find that while Supreme Court justices generally vote in ideologically consistent ways with the appointing president's policy preferences, this ideological concordance is short lived, lasting only for the first five years or so of an appointee's career. While the authors' examination is an excellent start, more is needed to fully understand this issue. For these reasons, this dissertation will examine a president's long-lasting influence over circuit court decision making, beginning with Chapter III and an examination of the longevity of judicial appointees.

CHAPTER III

LONG-TERM PRESIDENTIAL INFLUENCE ON THE CIRCUIT COURTS: LONGEVITY OF CIRCUIT COURT APPOINTEES

In his memo to President Richard Nixon concerning the importance of judicial appointments, White House staff member Tom Charles Huston noted:

> Perhaps the least considered aspect of Presidential power is the authority to make appointments to the federal bench – not merely the Supreme Court, but to the Circuit and District benches as well. Through his judicial appointments, a President has the opportunity to influence the course of national affairs for a quarter of a century after he leaves office (Goldman 1997, 205-206).

In this memo, Huston summarizes the clear fact that a president's judicial appointments may far outlast the president's tenure in office. With life tenure and the very small chance of removal by impeachment (Van Tassel 1993), federal judges have the ability to decide cases for several decades, impacting public policy long after elected representatives may be out of office. If presidents are successful in appointing judges and justices of a certain judicial philosophy, generally presumed to be that of the president (Cohen 2002), then the president has the ability to shape public policy, at least indirectly, several years after they leave the White House. However, for Huston's assessment to be accurate, a president must also select judges who will have lengthy careers on the court. This involves the appointees remaining in good health, on good behavior, being willing to continue to work despite ever-increasing caseloads, and willing to forgo other professional opportunities in order to remain on the federal bench.

Presidents are not blind to these simple facts. Evidence exists that presidents at least as far back as Theodore Roosevelt considered age to be a factor in judicial nominations. For example, when looking to fill an open seat on the Second Circuit, President Theodore Roosevelt

briefly considered one district court judge, but the fact that the potential nominee was already over sixty-years-old was a clear concern to the Administration (Solomon 1983, 310-311). More recent presidents have gone even further, seeking younger candidates who potentially would have longer tenures on the court (Goldman 1997). Evidence suggests that even President Dwight Eisenhower, who otherwise showed little interest in judicial appointments, considered age, setting sixty-two as the maximum appointment age (Goldman 1997, 115). When President Jimmy Carter took office, most of the Democrats on the federal district courts were older Kennedy and Johnson appointees. This gave President Carter a very small pool of acceptable candidates to promote from the districts to the circuit courts. Based on age concerns and diversity interests, only twenty-six percent of Carter's appointees to the circuit courts were former federal district court judges, which is a percentage far below any of Carter's contemporaries (Barrow, Zuk, Gryski 1996, 81). There was also a very serious concern during the Carter Administration over the possible nomination of Archibald Cox to the circuits. Cox was viewed as too old to serve, as the age limit since President Truman's Administration had been set at sixty-four years old. This was based on his health and the American Bar Association ratings, although Cox's experience and his ideological outlook were not questioned.[5] There is also evidence that President Johnson sought out younger jurists who potentially would have more impact on the courts (McFeeley 1987).

While presidents may have some control over selecting nominees based on age and health, they otherwise have little control over an appointee's length of service. Besides physical incapacity, there are several reasons a judge may leave the court after relatively few years in office. Many circuit judges would be able to make higher salaries in the private sector and, thus,

[5] Memo from Griffin Bell to President Carter, 5/8/1979, "Cox, Archibald," Box 11, Staff Office Counsel Files, Jimmy Carter Library.

resign for more lucrative private practice careers. Some even report coming under financial burdens by accepting lower salaries for their federal positions (Yoon 2005). Other judges with prior service may decide to assume senior status after a short period. Senior status involves the provisions under Title 28 of U.S. Code, Section 371(c), in which a federal judge assumes a position of semi-retirement. When a judge turns sixty-five years-old, she or he may retire at their current salary or take senior status, deciding cases on a part time basis, if they have at least fifteen years of active service as an Article III judge. According to U.S. government data, senior judges are involved in approximately fifteen percent of the federal courts' workload (Administrative Office of the United States Courts). Since there is no salary decrease for assuming senior status, there are no financial costs involved although there could be a perceived benefit from a much-reduced workload (Barrow, Zuk, Gryski 1996; Yoon 2005). While rare, sitting judges may also be swayed away from the judiciary to fill a different position in government. For example, Judge Griffin Bell, a Kennedy appointee, relinquished his lifetime position as a circuit court judge for private practice and to assist in President Carter's 1976 election campaign, then stayed on to serve as Carter's attorney general (*Time* 1976). Judges may be persuaded that their services are needed elsewhere in government by their own nominating president, such as Michael Chertoff who, after being appointed to the Third Circuit by President George W. Bush, left the court to become Director of the Department of Homeland Security (Stout 2005). For whatever the reason they may leave the bench, the shorter the tenure of the appointee, the less impact the president may have on the courts and the public policies produced by those courts.

The remainder of this chapter examines the longevity of service for presidential appointees from President Franklin Roosevelt to President George W. Bush. Since those judges

on senior status have become involved in such a large number of circuit court decisions in recent decades (Songer, Sheehan, and Haire 2000; Van Duch, 1996), I also examine the longevity of presidential appointees' service on active and senior status, combined, for recent presidential administrations. I used the Multi-User Data Base on the Attributes of U.S. Appeals Court Judges (Zuk, Barrow, and Gryski 1997, 2006),[6] which includes such information as the year of the nomination, the appointing president, the year the appointee left the bench, and other personal information about each appointee. Due to missing data and as a check, information from the Federal Judicial Center's web page (www.fjc.gov) was also added. To examine this longevity, this chapter examines the percentage of a president's appointees to the circuit courts that remain on the court after ten years, fifteen years, and twenty-five years. For those recent presidents who have not been out of office for longer periods, the cells in the tables below present the potential percentages of appointees that may serve for the periods indicated in each column. This analysis includes all of twelve geographical circuits, including the District of Columbia Circuit, but does not include the Federal Circuit Court of Appeals due to its very limited jurisdiction.

III.I. Appointees' Age at Appointment

The longer the judges remain on the bench, the more cases they are able to decide and the more policy they may create. If presidents appoint members to the circuit courts that remain only a few years, then judicial appointments obviously have less impact. While some research has examined the average age of nominees when they are appointed (Goldman 1997), very little research has systematically examined the length of service of judicial nominations. To do so will allow us to examine which presidents are more successful in nominating judges that serve for

[6] The judge attribute database can be found at the S. Sidney Ulmer Project at the University of Kentucky, http://www.as.uky.edu/polisci/ulmerproject/auburndata.htm. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors.

longer periods and thus which presidents may have more long-term impact on judicial policy making.

While what follows is largely a descriptive analysis, we can make some predictions and assessments based on those presidents that consider age as an important factor in their circuit court nominations. In his seminal work on lower federal court appointments from Franklin Roosevelt to Ronald Reagan, Sheldon Goldman (1997) examines each presidential administration's motivations and nominating strategies in detail. From Goldman's analysis of federal circuit court nominations, Table 3.1 displays the average age at the time of appointment for each presidential cohort from President Roosevelt to George W. Bush. Using the Federal Judicial Center, Goldman's original data was updated to include the appointees of Presidents George H. W. Bush and Bill Clinton, as well as the appointments made by George W. Bush through May 2007.

In his examination of presidential papers, Goldman suggests that five of the nine administrations he examined considered an appointee's age by either specifically selecting younger jurists or at least avoiding the appointment of older individuals to the circuits. Of those that specifically targeted younger judges, Goldman credits Ronald Reagan and Franklin Roosevelt, particularly in Roosevelt's later years, as attempting to appoint young judges to prolong their impact on the courts. As for Presidents Eisenhower, Johnson, and Carter, Goldman suggests that these administrations intentionally avoided appointing older judges, although Goldman found no evidence of these administrations specifically seeking younger judges. In his extensive analysis of President1987, 77) goes farther, suggestion that Johnson did purposely appoint younger judges, similar to Roosevelt and Reagan. Goldman (1997) indicates that there is

Table 3.1: Ages of Circuit Court Appointees At the Time of Appointment	
President	**Appointment Average Age**
F. Roosevelt	52.9
Truman	55.1
Eisenhower	55.9
Kennedy	54.0
Johnson	52.0
Nixon	53.7
Ford	49.2
Carter	51.8
Reagan	50.0
G.H.W. Bush	49.5
Clinton	51.9
G. W. Bush	50.3

very little Lyndon Johnson's appointments, McFeeley (evidence to suggest that Presidents Truman, Kennedy, Nixon, or Ford were concerned with the age of their judicial appointees. This is generally reflected in Table 3.1. Although most presidents appear to have an average appointment age of between fifty and fifty-five, the trend in recent administrations appears to be to appoint younger jurists, as Presidents George H.W. Bush, Clinton, and George W. Bush appear to have followed the paths of Roosevelt and Reagan in appointing younger judges. President Clinton's appointees were on average about fifty-two years old, while the appointments of President George H.W. Bush and George W. Bush are somewhat younger, at about fifty. Therefore, since age was a specific concern for Presidents Roosevelt, Eisenhower, Johnson, Carter, and Reagan, and appears to be a trend in the Clinton and both Bush Administrations, we can examine how well their strategies worked. If these presidents were successful, then their appointees should remain on the court longer, overall, than appointees from Presidents Truman, Kennedy, Nixon, and Ford.

III,II. The Longevity of Presidential Appointees

Table 3.2 displays the percentage of a president's appointees that remain on the court and on active status after ten years (row one), after fifteen years (row two), and after twenty-five years (row three). The values in parentheses represent the total number of judges serving on active status after the allotted times. Examining the ten-year period (row one), we can see that some presidents appear more successful than others in appointing judges that serve for more than a decade. Particularly those administrations represented in the second half of Table 3.2 appear more successful in selecting appointees to serve over ten years. For all presidents since Kennedy, over three-fourths of their appointees serve more than ten years on the bench. Since President Ford, this number increases to over eighty-percent. Therefore, it is clear that the vast majority of presidential appointees since the Roosevelt Administration are serving for at least a decade. President Carter appears to have the most success, as over eighty-seven percent of his appointees remained on active status ten years or more after their appointments to the bench. Based on numbers, alone, President Reagan comes out ahead with sixty-four of his circuit court appointees remaining on the bench a decade after their appointments. Even given that four of his circuit court appointees (John M. Harlan, Charles Whittaker, Potter Stewart, and Harry Blackmun) were later elevated to the Supreme Court, three of these by Eisenhower himself, President Eisenhower has a high number of judges remaining on the bench at seventy-one percent.

Row two of Table 3.2 examines the number of presidential appointees still serving after fifteen years. Here we see more variation across presidential cohorts, but again the general trend continues, as more recent presidents appear to appoint judges that stay on the bench for longer

Table 3.2: Longevity of Appointees: Percentage of Appointees Serving on Active Status Over Time (Number in Parentheses)

Time Period	Appointing President				
	F.D. Roosevelt Judges	**Truman Judges**	**Eisenhower Judges**	**Kennedy Judges**	**Johnson Judges**
Appointees on Active Service For Over 10 Years	64.7% (33)	59.3% (16)	71.1% (32)	75.0% (15)	78.0% (32)
Appointees on Active Service Over 15 Years	51.0% (26)	44.4% (12)	33.3% (15)	45.0% (9)	48.8% (20)
Appointees on Active Service 25 Years or More	15.7% (8)	3.7% (1)	2.2% (1)	10.0% (2)	7.39% (3)

Time Period	Appointing President					
	Nixon Judges	**Ford Judges**	**Carter Judges**	**Reagan Judges**	**G.H.W. Bush Judges**	**Clinton Judges**
Appointees on Active Service For Over 10 Years	75.6% (34)	83.3% (10)	87.5% (49)	82.14% (64)	81.1% (30)	88.5%* (54)
Appointees on Active Service Over 15 Years	37.8% (17)	50.0% (6)	62.5% (35)	51.3% (40)	64.8%* (24)	88.5%* (54)
Appointees on Active Service 25 Years or More	4.4% (2)	8.3% (1)	19.6% (11)	28.2%*[8] (2)	54.4%* (20)	88.5%* (54)

Note: Asterisks (*) represent the number of potential appointees for those administrations that have not been out of office for the amount of time in the corresponding rows

periods. For five of the nine presidential administrations (excluding President Clinton who has been out of office for less than fifteen years) a majority of the appointees were still serving after fifteen years. President George H.W. Bush currently has the highest percentage of judges serving fifteen years or more, although this number includes those judges currently serving who were appointed in 1992 and have not completed their fifteenth year until the end of 2007. Nearly two-thirds of the Bush appointees are still on the court today, most of these having been appointed before 1992 and thus achieving fifteen years of experience. Bush's number are made more surprising by the fact that three of his circuit court appointments were elevated to the Supreme Court, David Souter and Clarence Thomas by George H.W. Bush, himself, and Samuel Alito by President George W. Bush in 2006. After President Bush, President Carter also has a high number of appointees remaining in active service, over sixty-two percent, again made more surprising that two of his circuit court appointees, Ruth Bader Ginsburg and Stephen Breyer, were elevated to the Supreme Court after serving less than fifteen years on the circuit bench. President Reagan's cohort is surprising low at just over fifty-one percent, given the Reagan Administration's attempts to appoint younger judges (Goldman 1997)

Examining the final row in Table 3.2, we see the percentage of presidential circuit court appointees that serve twenty-five years or more. Building on Huston's memo to Nixon (Goldman 1997), having an appointee serve for a quarter of a century would give a president substantial influence through these appointees, presuming the president is seeking a policy agenda with their appointments, that they are successful in selecting like-minded judges, and that the judges behaviors remain consistent over time. Here, we the longevity of the Reagan appointees are potentially more in-line with expectations. As of May 2007, twenty-two of President Reagan's appointees (over twenty-eight percent) are still on active status, although it

must be noted that some of Reagan's appointees have served less than a full twenty-five year term. Of those administrations that have been out of office for more than twenty-five years, President Carter's judicial cohort appears to have the best record for longevity as nearly one-fifth of his appointees remained on the bench for twenty-five years or more after appointment. President Roosevelt also appears successful in selecting judges that served for long periods, as over fifteen percent of his appointees remained on the circuit courts in active service for over two-and-one-half decades after being appointed.

While examining those judges that remain on active status for longer careers provides some indication of judicial legacy on the courts, many cases are currently decided with panels of judges that include at least one judge on senior status (Administrative Office of the United States Courts). These judges could have important policy impact, as their votes count the same as active members on the panel and the opinions they author have the same precedential value as opinions authored by active judges. Although the president's impact on public policy would be less because these judges decide fewer cases per term than active status judges and that because they do not participate in *en banc* hearings, a president may nevertheless exert some indirect influence on public policy if their appointees continue to decide cases while on senior status.

Table 3.3 examines recent presidential administrations and the overall length of time of their appointments, including the time judges serve on active and senior status. When we include those judges on active status, the values in the cells dramatically increase, particularly in the bottom two rows. Row one, depicting the percentage of appointees that are deciding cases either on active or senior status does not change significantly. Each presidential percentage does increase somewhat, with the greatest gains coming from the Kennedy and Reagan cohorts which increased ten percentage points each. As with the active judgeships examined in Table 3.2,

Table 3.3 shows that President Carter had the highest percentage of appointees serving in some capacity in row one. After ten years on the bench, we see that out of President Carter's fifty-six circuit court appointments, only one judge, Albert Tate who passed away in 1986 (Federal Judicial Center), served less than ten years on the bench. Given Carter's high number of appointments, this means that over ninety-eight percent of Carter's appointees served over a decade as active-status judges or deciding cases as senior-status judges. Comparatively, six of President Johnson's appointees served in some capacity for less than ten years (nearly fifteen percent), and eight of Nixon's forty-five appointees served ten years or less, although Nixon, himself, was able to replace several of these appointees. For Carter's successor, seventy-two of President Reagan's seventy-eight appointees (over ninety-two percent) served over ten years, and even among the six that left the court in less than ten years, Reagan himself replaced three of these short-tenured judges.

Row two of Table 3.3 depicts the percentage of a president's appointees that served in some capacity on the circuit courts after fifteen years. Here, we see more variation between the presidential cohorts, although at least seven out of ten judges served for over fifteen years in some capacity for each president. Similar to the active status tables, we see that more recently serving presidents appoint judges that remain on the court for longer periods, either in active or senior status. Again, President Carter has the highest percentage of appointees serving in some capacity after fifteen years with eighty-nine percent of his appointees still deciding cases after a decade and one-half. Numerically, President Reagan has the most judges still on the bench, with sixty-eight, representing over eighty-seven percent of his total appointees. The administrations with the lowest percentage of judges serving after fifteen years include the Kennedy and Johnson

Table 3.3: Longevity of Appointees: Percentage of Appointees Serving on the Bench in Either Active or Senior Status Over Time (Number in Parentheses)

Time Period	Appointing President					
	Kennedy Judges	**Johnson Judges**	**Nixon Judges**	**Ford Judges**	**Carter Judges**	**Reagan Judges**
Appointees Serving Over 10 Years	85.0 % (17)	83.0% (34)	82.2% (37)	91.7% (11)	98.2% (55)	92.3% (72)
Appointees Serving Over 15 Years	70.0% (14)	70.7% (29)	75.6% (34)	75.0% (9)	89.3% (50)	87.2% (68)
Appointees Serving Over 25 Years	40.0% (8)	51.2% (21)	48.9% (22)	58.3% (7)	57.1% (32)	80.8* (63)
Note: Asterisks (*) represent the number of potential appointees for those administrations that have not been out of office for the amount of time in the corresponding rows						

appointees at seventy percent, while for Presidents Nixon and Ford, three out of four of their appointees were deciding circuit court cases in some capacity after fifteen years.

The final row displays the percentage of judges serving in some capacity after twenty-five years. This row gives us a better sense of the long-term capabilities of a president to influence policy through appointments. Here, a president's appointees are deciding cases a quarter of a century after they were appointed, long after a president has left office due to term limits. In row three, we see that, in general, about half of the presidents' circuit court appointees are deciding cases after twenty-five years. The administration that appears to have fared the worst was the Kennedy Administration, with only four out of ten appointees remaining on either active or senior status after twenty-five years. Again, however, we do see that more recent administrations appear to appoint judges that stay on the court for longer terms. Presidents Ford and Carter both have relatively high percentages of their appointees still on the courts, nearly

sixty-percent. Although not yet out of office for twenty-five years, President Reagan's cohort has the potential for remaining on the court the longest overall. Out of Reagan's twenty-one appointees still on active service as of May 2007, another forty-two appointees are still serving as senior judges. These appointees, nearly eighty percent of all of Reagan's courts of appeals appointments, may prove that the Reagan Administration's strategy of selecting younger judges was successful if these jurists continue their service on the bench.

III.III. Conclusions and Discussion

When looking at presidents' motivations and their goals of appointing younger judges that will potentially serve for longer terms, we find that presidential success is somewhat mixed. Goldman (1997) found that age was a specific concern for Presidents Roosevelt, Eisenhower, Johnson, Carter, and Reagan. The age of the appointees of President Clinton and both Bush Administrations also suggests that age may be a factor considered in their nomination processes. However, Presidents Truman, Kennedy, Nixon, and Ford did not appear to consider age as a significant factor in nominations (Goldman 1997). Examining the longevity of appointees, Roosevelt, Carter, and Reagan's strategies of considering age appears to have been a successful technique in selecting judges that served or are serving for longer terms, particular in selecting judges that served for more than twenty-five years as displayed in Table 3.2. President Truman, Nixon, and Ford's age neutral approach to nominations does appear to produce appointees that serve on active status for shorter periods, although the Nixon and Ford appointees do appear to stay on the court on senior status generally as long as other presidential appointees as shown in Table 3.3. While not specifically targeting younger judges, President Kennedy appears to have benefited by long-serving judges, as his appointees in general remain on the court for nearly as long as other presidents that considered age during the appointment process. While considering

Goldman's (1997) assessments of executive administrations' techniques concerning age, the data suggests that those presidents that consider age as a factor are more successful in selecting judges that remain on the court longer. However, the differences are not as dramatic as expected and some administrations, such as Presidents Kennedy, Nixon, and Ford, which did not specifically consider age, appear to be as successful as those administrations that did consider age. This suggests that either these administrations benefited without specifically intending to select younger appointees or, alternatively, that age and longevity may have been considered by these administrations on a more informal basis that is less detectible to researchers. These more informal and less public considerations could remain undiscovered through Goldman's examination of presidential papers. Despite the fact that these differences are not extreme, it is clear that those administrations that targeted younger judges have at least some advantages in selected longer-serving appointees, as Table 3.2 displays.

One clear trend from Tables 3.2 and 3.3 is that the average length of service for the appointees appears to increase in recent decades. This generally supports the position of Scherer (2005) and others that suggest a dramatic change from a patronage-based appointment strategy, where age is irrelevant to rewarding political allies, to a policy-based appointment strategy where the length of service of the judges also represents the level of policy influence a president may have through the courts. Scherer (2005, 6) suggests the shift to policy and political considerations in judicial appointments occurred in the late 1960s, which generally coincides with this analysis showing more recent appointees remaining on the courts for longer periods. This also follows Goldman's (1997) analysis that suggests more recent executives, particularly during the Reagan Administration, selected their appointees based on policy implications. Therefore, a situation may exists where presidents are selecting judges based on policy concerns

and that these policy-based appointees are serving for longer periods, raising the possibility of increased influence for presidents in the public policy sphere through their appointment powers. While not all presidents may have a substantial impact after twenty-five years, as Huston's memo to Nixon (Goldman 1997) may suggest, we do see a trend moving toward that level of presidential influence. However, although having appointees serve for long periods of time is a necessary condition for presidential influence, it by itself is not sufficient to assure long-term policy impact through judicial nominations. A president still may be limited by the composition of the circuits and changes in judicial behaviors over time, which will be examined in Chapters IV and V, respectively.

CHAPTER IV

PRESIDENTIAL INFLUENCE ON CIRCUIT COURT COMPOSITION

While appointing nominees that serve for long periods may increase a president's influence, an administration's ability to sway public policy through the courts will largely be a function of their ability to shape the ideological makeup of the circuits' personnel. Although a president may appoint nominees that remain on the court for many years, if a president has few opportunities to make appointments, the length of service becomes of minimal importance. Further, since appellate courts must generally make their rulings by reaching a consensus, the importance of each nomination is partially based on the environment in which they are placed. As scholars others have noted:

> Since U.S. federal judges serve lifetime appointments during good behavior, a president must accept the composition and orientation of the judiciary as it has been willed to him by his predecessors. What this means in practical terms is that if a new president faces a judiciary whose trial and appellate court judges already share his basic ideology, the impact of his new judicial appointees will be more immediate and substantial. Conversely, if a new chief executive is confronted with a majority of trial and appellate jurists who are committed to values radically different from his own, the impact of the subsequent judicial appointments will be much weaker and slower to materialize (Rowland and Carp 1996, 54-55).

The number of nominations a president may be able to make over his tenure in the White House will thus have a significant impact on that administration's ability to influence policy through the courts. If a president is able to appoint a majority of a circuit's members, then that president could sway the overall ideological makeup of the court and thus influence a large number of the decisions made in that circuit. For example, appointing a substantially large number of conservatives to a circuit largely consisting of judges that are more liberal could

greatly influence the decisions coming out of that circuit. However, appointing a lone conservative judge to a circuit with unanimously liberal judges would not grant the president much of an opportunity to influence the decisions from that circuit (Haire 2006; Rowland and Carp 1996).

The number of appointments a president may make is determined by several factors. First, a president's opportunities may be due to the natural turnover of judges as they age out of office or pursue other careers. However, some judges may also act strategically by timing their retirements to allow a same-party president to fill their seats (Barrow, Zuk, Gryski 1996; Barrow and Zuk 1990, Spriggs and Wahlbeck 1995). Second, Congress can influence the number of presidential appointments through the creation of new judicial positions, sometimes referred to as "judicial pork barrel politics" (Goldman 1996, 358). For example, nearly one-third of President George H.W. Bush's circuit court appointees were due to the Judgeship Act of 1990, which allowed Bush to fill eleven new circuit positions (Rowland and Carp 1996). President Jimmy Carter arguably gained the most from judicial pork barrel politics, as over sixty-percent of Carter's total nominations, including district and circuit court appointments, were nominated to fill newly created seats on the federal bench (Zuk, Barrow, Gryski 1996). These new appointments were seen as important steps to fostering larger policy initiatives, such as the Carter Administration's goals of improving access to the courts through class action lawsuits, relaxation of the standing rules,[9] and the ability to redress perceived inequalities in the number of female and minority judges.[10] A third factor that could determine a president's ability to make appointments would obviously be the time the president serves in office. Obviously, the longer a

[9] Memo to Stuart Eizenstat from Joe Onek, 1/25/1977, "Judgeships," Box 23, JC-DPS-Gutierrez File, Jimmy Carter Library.
[10] Statement by President Carter on the Signing of the Omnibus Judgeship Act, "Judgeships (Active)," Box 29, Staff Office Counsel Files (Lipshutz), Jimmy Carter Library.

president serves, the higher the number of appointments a president may be able to make due to the natural turnover. As we see below, Presidents Reagan and Clinton, both serving for eight years, were able to significantly reshape the judiciary through numerous appointments to the circuit courts. However, President Ford's short tenure allowed him to appoint only twelve nominees to the courts of appeals.

As one recent study has shown, influencing the partisan majority of a circuit may have an extensive effect on the partisan composition of the three-judge panels that decide the vast majority of circuit court cases. Statistical analysis shows that due to sampling principles, the three-judge panel system will create a higher number of panel-majorities for the party in power than would be predicted by the overall partisan ratio on the circuits (Velona 2005). For example, on a five-judge circuit with three Republicans and two Democrats, Democrats represent forty-percent of all the judges on the circuit. However, if we consider each possible combination of three-judge panels that could result, Democrats will be the majority on the panel only thirty-percent of the time, ten-percent less than we would expect by the number of seats they control (Velona 2005, 27). The larger the gap between the partisan majority and minority on the court, the larger this "exaggeration effect" will be concerning the panel compositions. As Velona (2005) points out, seemingly small percentages of differences between the partisan compositions of the circuits may have significant effects on panel composition and case outcomes. In her recent study of the Ninth Circuit Court of Appeals, Haire (2006) likewise stressed how the number of appointments and the partisan composition to an individual circuit may impact judicial decisions rendered in that circuit.

Aside from influencing the circuits through the three-judge panels, altering the ideological composition of the circuits is also important for another reason, namely the *en banc*

proceedings. An *en banc* hearing involves all of the active judges within the circuit reviewing the decision of a three-judge panel by rehearing the case as an entire circuit (Cohen 2002). Much like the Supreme Court, the full circuit then decides the outcome by majority vote, possibly undoing the three-judge panel decision. While rare (George and Solimine 2001), *en banc* decisions give the entire circuit the ability to limit the discretion and influence of any single judge or three-judge panel, allowing the court as a whole to "patrol the outer boundaries of any individual judge's autonomy" (Cohen 2002, 48). Federal statutes also provide for "mini-*en banc*" proceedings for any circuit with more than fifteen members (28 U.S.C. § 46(c)). These mini-*en banc* proceedings, currently only conducted in the Ninth Circuit Court of Appeals, allow the initial three-judge panel decision to be reviewed by a larger group of judges consisting of less than the entire circuit (Cohen 2002). If a majority of the circuit agrees, the mini-*en banc* decision can also be reheard and possibly overturned by a full *en banc* hearing (Cohen 2002). Therefore, a president appointing a plurality or majority of active judges within a circuit would have a large impact on any *en banc* decisions, particularly if appointees selected by presidents vote as a cohesive unit as has been found in the Supreme Court (Lindquist, Yalof, and Clark 2000). For example, one study found that Reagan circuit court appointees used *en banc* hearings as a means to reverse more liberal decisions decided by Democratically appointed judges (Smith 1990). Therefore, if circuit court judges also vote as a cohesive unit, either in *en banc* hearings or when joined on a three-judge panel, they could intensify a president's policy impact.

Regardless of the number of overall appointments a president may make, where these openings occur may also be important in influencing the composition of particular circuits. As circuit court rulings are binding precedent in the states within that circuit (Cohen 2002), even a few key appointments within a particular circuit may have significant impact on that particular

bench. For example, President George H.W. Bush made thirty-five appointments to the federal courts of appeals, representing only twenty-two percent of the active bench at that time. However, three of these appointments were to the First Circuit Court of Appeals. This represented one-half of the active seats in that circuit. Therefore, although Bush's influence on the circuits overall may have been small, if this cohort remained together on the circuit for some time, Bush's influence over the First Circuit could greatly affect the public policies within that circuit long after Bush left office.

Presidents may also wish to make appointments to correct perceived imbalances based either on partisanship or ideology. For example, President Roosevelt asserted the need to balance the court from so many Republican judges (Goldman 1997). Within the Carter Administration, there is some evidence of trying to influence the ideological composition of the circuits, such as the appointment of Nathanial Jones to the Sixth Circuit to "balance out" other conservative appointments from previous administrations (Goldman 1997, 251). There is also some suggestion that even Congress may consider partisan imbalances, as prior researchers haven noted:

> [W]hen a party recaptures the White House after an extended absence – and with a bench stacked with judges of the other party – the opposition party will be more tolerant of presidential efforts to redress a politically imbalance bench, at least up to a point" (Barrow, Zuk, and Gryski 1996, 16).

To examine the president's ability to shape the personnel composition of the individual circuits and the entire federal courts of appeals, a careful analysis of judicial turnover was conducted for each active seat for the entire bench. Again, this chapter utilized the Data Base on the Attributes of U.S. Appeals Court Judges (Zuk, Barrow, and Gryski 1997, 2006). Information on each circuit judge serving during the relevant periods was also examined using Federal Judicial Center's web page (www.fjc.gov) as a check for accuracy and to provide information

missing from the Attributes Data Base database. The Attributes Data Base also uses a unique identifying number for each seat within each circuit, although these seat numbers were sometimes inconsistent over time. Using a combination of the Attributes Data Base and information from the Federal Judicial Center, changes were mapped out within each circuit from President Franklin D. Roosevelt to the current administration. Tables were created for each circuit to signify the names of the appointees, their partisan affiliation, the year appointed, the appointing president, the year the appointee left active service, and the president that made the previous appointment. These tables allow an analysis of the partisan changes from year-to-year and from presidential administration-to-administration. While the tables for each circuit are too large for reproduction in this dissertation, Appendix A provides an example of the timelines that were created for each circuit. This example depicts the changes over time for the First Circuit Court of Appeals. A similar set of tables was completed for each of the twelve geographical circuits, including the circuit for the District of Columbia.

From these tables depicting the changes across all circuits, I created a set of tables that depicts the circuit changes divided by presidential administrations from Franklin Roosevelt to George W. Bush. This set of tables allows us to view the impact on the partisan composition of each individual circuit and within all circuits, collectively. While partisanship is a somewhat blunt measure of ideology, as indicated above, past studies have found significant differences among judicial behaviors based on partisanship. The political party of the judge and/or appointing president has been found to be one of the best predictors of behaviors, with Democratic judges generally favoring more liberal outcomes and Republican judges favoring more conservative outcomes (e.g. Goldman 1975; Rowland and Carp 1996; Songer and Davis 1990). Therefore, examining the partisan composition of the circuits allows us to examine the

overall ideology of the circuit as well as allows speculations about the outcomes that will likely follow from those circuits. Appointing large numbers of one's own party to a circuit may greatly increase the chances of creating a majority on the individual three-judge panel as well as possibly influencing the outcomes of *en banc* hearings.

Aside from changing the partisan compositions of the circuits, if presidents are able to appoint large numbers of their own appointees to any circuit, it may assure that certain issues important to the president will be decided according to the president's policy goals. By the end of President Lyndon Johnson's administration, lower court judges were routinely screened for their legal philosophy and also "in areas often removed from the judicial or legal sphere, such as foreign policy" (McFeeley 1987, 51). President Richard Nixon pledged to nominate judges that would support strong policing measures and to be vigilant against criminal activities (Rowland, Songer, and Carp 1988). President Franklin Roosevelt shared a similar goal to influence specific policies through judicial nominations, seeking judges that would support his economic programs (Goldman 1997). President Ronald Reagan likewise wanted to influence economic policy through the courts by nominating judges that would support business interests (Rowland and Todd 1991). Therefore, not only do multiple appointments allow a president to shape the overall ideology of a circuit, but having the ability to appoint many judges may also provide presidents the opportunities to shape policy in specific issue areas important to that administration.

However, just as presidents are beholden to the events that occurred before they arrived at the White House, their power is also curbed by what happens after they move out of the executive's residence. As circuit court personnel are constantly evolving, the president's best attempts to stack the court may be very short-lived. As noted in the previous chapter, a president may try to increase the long-term impact of appointments by nominating younger judges that

could presumably serve for longer terms (Goldman 1997; McFeeley 1987). However, the retirement or incapacity of appointees is largely out of the president's control, as well as Congress' ability to expand the judiciary during a subsequent administration.

The remainder of this chapter will briefly examine the partisan status of the circuit courts at the beginning of Franklin Roosevelt's Administration and up until May of 2007 with the current administration of George W. Bush. The analyses that follow compare the overall changes in the partisan composition of each circuit between administrations and assess the ability of each president to appoint a proportion of the circuit judgeships. This allows us to examine the state of the circuits at the time the president takes office, his impact on the personnel within the circuits, and whether those changes were long lasting or short-lived. The values in the "TOTALS" row represent the president's impact for the entire circuit court, collectively. These values represent the number of active seats filled by each president, not necessarily the total number of appointments made. For example, President Roosevelt officially made fifty-one nominations to the federal courts of appeals (Federal Judicial Center). However, twelve of these successful nominations were appointed to replace previous Roosevelt appointees who had retired or passed away while Roosevelt was still in office. This means that, in effect, Roosevelt was able to fill thirty-nine *seats* on the circuit courts. Therefore, any discrepancies between the number displayed in the following tables and the official number of total appointments made are due to these "replacement" nominations. Cells that include an asterisk, "*", indicate circuits that possessed an open seat either at the beginning or end of a president's term.

Excluding pending nominations and excluding the U.S. Court of Appeals for the Federal Circuit, the courts of appeals currently have 255 judges as of May 2007 (154 active and 101 on senior status)(Federal Judicial Center). However, the number of active seats has fluctuated since

the inceptions of the circuit courts. Table 4.9 at the end of this chapter displays the number of seats added to the circuit courts since the Roosevelt Administration. For example, just three decades ago the circuit courts had only 97 active judge positions, with 53 judges serving on senior status (Federal Judicial Center). While senior status judges are an important component to the make-up of the circuit courts (Feinberg 1990; Van Dutch 1996), as active status judges decide the majority of cases in the circuit courts (Songer, Sheehan, and Haire 2000) this analysis will examine only the turnover for active judge seats.

IV.I. Composition Changes under Presidents Franklin Roosevelt and Truman

Table 4.1 shows that at the beginning of Roosevelt's term only thirty-one percent of the active-judge seats were filled by Roosevelt's party. However, by the end of his administration, Roosevelt had picked up twenty-eight seats for members of his own political party, ensuring that nearly three-fourths of the judges were Democrats. As well as drastically altering the partisan composition of the circuits, collectively, President Roosevelt was able to create new Democratic majorities in seven of the eleven circuits. As displayed in Table 4.9 at the end of this chapter, Congress assisted Roosevelt by authorizing thirteen new circuit judgeships during his administration. Of his appointees, Roosevelt nominated only four Republicans (Zuk, Barrow, and Gryski 1997), three of which were regarded as being ideologically liberal and one, William Clark, who was also a close friend of President Roosevelt (Goldman 1997). Particularly in the smaller circuits, this would ensure that most of the three-judge panels deciding circuit cases would be composed of a majority of Democrats. These were important steps to fulfill Roosevelt's partisan-agenda goals (Goldman 1997), but also appointing his own appointees would foster the Administration's policy goals as well.

Aside from creating these strong partisan majorities, Roosevelt was able to fill two-thirds of the circuit court's active judgeships during his extensive term of office. By the end of his administration, Roosevelt had appointed a majority of the judges in eight of the eleven circuits. These majorities also included two circuits, the First Circuit Court of Appeals (which included Maine, Massachusetts, New Hampshire, Rhode Island, and currently includes Puerto Rico) and the Third Circuit (which currently includes Delaware, New Jersey, Pennsylvania, Vermont, and currently the Virgin Islands) in which Roosevelt was able to appoint all of the judges. Out of these Roosevelt majorities, two would last until 1959 (the First and the Third Circuits), three others would last until the mid-1950s (the Eighth, Ninth, and Tenth), while the other three (the Sixth, Seventh, and the D.C. Circuits) would end before 1950. Even after he was out of office for a decade, a majority of Roosevelt appointees filled five of the eleven circuits. If Roosevelt was successful in selecting like-minded judges, this would ensure not only a favorable court in partisan terms, but also a favorable judiciary on specific issues important to Roosevelt's administration.

With the already high number of Democrats on the bench following Roosevelt's tenure, President Harry Truman's impact on the partisan composition was much less dramatic. While Truman had the opportunity to fill twenty-six of the sixty-five active seats, the circuits were already saturated with Democratic judges. As the courts were already deciding cases in-favor of administrative programs, judicial appointments were less a priority to the Truman Administration (Goldman 1997, 76). However, President Truman did add to the Democratic majority, increasing the partisan ratio to seventy-eight percent Democratic to twenty-two percent Republican. Truman was also helped by the expansion of the federal bench, as nine new judgeships were added to the circuit courts during Truman's administration. Only three of

Table 4.1: Influencing Circuit Court Composition: The Roosevelt and Truman Administrations, 1933 – 1952

President	Circuit	Percentage of Judges of the President's Party at beginning of term[11]	Percentage of Judges of the President's Party at the end of term	Number of Seats that Change for the President's Party	Percentage of Active Seats Appointed by the President at the end of term
F. D. Roosevelt 1933-1945	1st	33% (1 of 3)	100% (3 of 3)	+2 (+ 67%)	100% (3 of 3)
	2nd	40% (2 of 5)	50% (3 of 6)	+1 (+10%)	33% (2 of 6)
	3rd	50% (2 of 4)	100% (5 of 5)*	+3 (+50%)	100% (5 of 5)
	4th	0% (0 of 3)	33% (1 of 3)	+1 (+33%)	33% (1 of 3)
	5th	75% (3 of 4)	83% (5 of 6)	+2 (+8%)	50% (3 of 6)
	6th	0% (0 of 4)	67% (4 of 6)	+2 (+67%)	67% (4 of 6)
	7th	67% (2 of 3)*	80% (4 of 5)	+2 (13%)	60% (3 of 5)
	8th	20% (1 of 5)	71% (5 of 7)	+4 (+51%)	57% (4 of 7)
	9th	50% (1 of 2)*	86% (6 of 7)	+5 (+56%)	86% (6 of 7)
	10th	0% (0 of 4)	75% (3 of 4)	+3 (+75%)	75% (3 of 4)
	11th	--	--	--	--
	D.C.	20% (1 of 5)	67% (4 of 6)	+3 (+47%)	83% (5 of 6)
TOTALS		**31 % (13 of 42)**	**74% (43 of 58)**	**+28 (+43%)**	**67% (39 of 58)**
Truman 1945-1952	1st	100% (3 of 3)	100% (3 of 3)	0 (0%)	33% (1 of 3)
	2nd	50% (3 of 6)	67% (4 of 6)	+1 (+17%)	17% (1 of 6)
	3rd	100% (5 of 5)*	100% (7 of 7)	+2 (+0%)	43% (3 of 7)
	4th	33% (1 of 3)	33% (1 of 3)	0 (0%)	0% (0 of 3)
	5th	83% (5 of 6)	83% (5 of 6)	0 (0%)	67% (4 of 6)
	6th	67% (4 of 6)	67% (4 of 6)	0 (0%)	17% (1 of 6)
	7th	80% (4 of 5)	50% (3 of 6)	-1 (-30%)	67% (4 of 6)
	8th	71% (5 of 7)	71% (5 of 7)	0 (0)	14% (1 of 7)
	9th	86% (6 of 7)	100% (7 of 7)	+1 (+14%)	29% (2 of 7)
	10th	75% (3 of 4)	80% (4 of 5)	+1 (+5%)	20% (1 of 5)
	11th	--	--	--	--
	D.C.	67% (4 of 6)	89% (8 of 9)	+4 (+22%)	89% (8 of 9)
TOTALS		**74% (43 of 58)**	**78% (51 of 65)**	**+8 (+4%)**	**40% (26 of 65)**

[11] Partisan independents are treated as belonging to the same party as the appointing president.

Truman's appointments were Republicans (Zuk, Barrow, and Gryski 1997). Truman had the opportunity to appoint a new majority of his own appointees in three circuits, the Fifth Circuit (which at the time included Florida, Georgia, Alabama, Tennessee, Mississippi, Louisiana, and Texas), the Seventh Circuit (which includes Wisconsin, Illinois, and Indiana), and in the District of Columbia Circuit. Truman had the most impact on the D.C. Circuit, largely because he was able to appoint judges to three newly created positions. The Truman majority in the D.C. Circuit would be maintained until 1962, over a decade after Truman left the White House. The Truman majorities in the Fifth and Seventh Circuits were short-lived, ending in 1955 and 1958, respectively

IV.II. Composition Changes Under President Eisenhower

After nearly twenty years of Democratically appointed judges, President Dwight Eisenhower possessed the opportunity to create some inroads into the large Democratic advantages. Although not credited for using the judiciary for policy gains (Goldman 1997), Eisenhower had the opportunity to fill thirty-nine circuit judge positions, over fifty-seven percent of all the active seats in the federal courts of appeals, as displayed in Table 4.2. This high number is made more remarkable by the fact that Congress did not greatly assist Eisenhower, as it had Eisenhower's two predecessors. During his administration, Eisenhower filled only three new seats created by Congress. Eisenhower indeed used his nomination powers for partisan gains, as he appointed only three Democrats to the circuit courts during his term in the White House (Goldman 1997; Zuk, Barrow, and Gryski 1997). Through these appointments, Eisenhower was able to create a new Republican majority in the federal courts of appeals as a whole, and create Republican majorities in five of the eleven individual circuits. Democratic

Table 4.2: Influencing Circuit Court Composition: The Eisenhower Administration, 1953 - 1960

President	Circuit	Percentage of Judges of the President's Party at beginning of term	Percentage of Judges of the President's Party at the end of term	Number of Seats that Change for the President's Party	Percentage of Active Seats Appointed by the President at the end of term
Eisenhower 1953-1960	1st	0% (0 of 3)	33% (1 of 3)	1 (33%)	33% (1 of 3)
	2nd	33% (2 of 6)	67% (4 of 6)	2 (+34%)	83% (5 of 6)
	3rd	0% (0 of 7)	14% (1 of 7)	+1 (+14%)	14% (1 of 7)
	4th	66% (2 of 3)	66% (2 of 3)	0 (0%)	100% (3 of 3)
	5th	17% (1 of 6)	71% (5 of 7)	+4 (+54%)	71% (5 of 7)
	6th	33% (2 of 6)	50% (3 of 6)	+1 (+17%)	50% (3 of 6)
	7th	50% (3 of 6)	100% (6 of 6)	+3 (+50%)	83% (5 of 6)
	8th	29% (2 of 7)	57% (4 of 7)	+2 (+28%)	57% (4 of 7)
	9th	0% (0 of 7)	78% (7 of 9)	+7 (+78%)	78% (7 of 9)
	10th	20% (1 of 5)	40% (2 of 5)	+1 (+20%)	40% (2 of 5)
	11th	--	--	--	--
	D.C.	11% (1 of 9)	33% (3 of 9)	+2 (+22%)	33% (3 of 9)
TOTALS		**22% (14 of 65)**	**56% (38 of 68)**	**+24 (+34%)**	**57% (39 of 68)**

majorities remained only in the First, Third, Tenth Circuit (which includes Wyoming, Utah, Colorado, Kansas, Oklahoma, and New Mexico), and in the D.C. Circuit.

Aside from creating partisan changes, six of the eleven circuits were now filled by a majority of Eisenhower appointees. Of these Eisenhower majorities, one, the Second Circuit (which includes New York, Connecticut, and Vermont) would last until 1971. Another Eisenhower majority created in the Ninth Circuit (which now includes Washington, Oregon, California, Alaska, Hawaii, the South-Asian territories, and the western states of Montana, Idaho, Nevada, and Arizona) would last until 1968. The other four Eisenhower majorities were created in the Fourth Circuit (which includes West Virginia, Virginia, Maryland, North Carolina, and South Carolina) the Fifth Circuit, the Seventh Circuit, and the Eighth Circuit (which includes

Arkansas, Missouri, Iowa, Minnesota, North Dakota, South Dakota, and Nebraska). These four Eisenhower majorities would last until the mid-1960s.

IV.III. Composition Changes Under Presidents Kennedy and Johnson

Following the gains made by Republicans in the circuits during the Eisenhower Administration, President John F. Kennedy arrived at the White House with a circuit bench composed of fifty-six percent Republican judges. The Democratic stronghold created during the Roosevelt and Truman administrations, where nearly eight out of ten judges were Democrats, had shifted to a Republican majority overall and Republican majorities in six of the eleven individual circuits. However, Kennedy was able to make partisan changes in the circuits despite his short time as president.[12] Overall, Kennedy added twelve Democratic judges to seats that had either previously been filled by Republicans or were among the ten newly created seats during Kennedy's tenure. This created a slight Democratic majority in the circuit courts overall, with fifty-four percent Democrats and forty-six percent Republicans. Of these Kennedy appointees, none were Republicans, although one, Paul Hayes of the Second Circuit, was a member of a third party (Zuk, Barrow, and Gryski 1997). While the Kennedy Administration was willing to make some partisan concessions and attempted to appoint some Republicans, the Democratically controlled Senate was not accommodating and often blocked these attempts (Goldman 1997). In the individual circuits, Kennedy was able to create new Democratic majorities in three circuits, the Second, Fourth, and Eighth Circuits, as displayed in Table 4.3. Kennedy was unable to

[12] There is some disagreement over those appointees that were nominated by Kennedy but were confirmed after President Johnson took office in November 1963. Sheldon Goldman argues that these nominees should be considered Johnson appointments since Johnson could have withdrawn them before confirmation (Goldman 1997, 187). Zuk, Barrow, and Gryski (1997) appear to take the same approach in their Attributes Database, noting twenty total nominations for Kennedy and forty-one total nominations for Johnson. However, the Federal Judicial Center categorizes George C. Edwards, Jr., a Sixth Circuit nominee, as a Kennedy appointee, thus signifying twenty-one Kennedy appointees and

Table 4.3: Influencing Circuit Court Composition: The Kennedy and Johnson Administrations – 1961 - 1968

President	Circuit	Percentage of Judges of the President's Party at beginning of term	Percentage of Judges of the President's Party at the end of term	Number of Seats that Change for the President's Party	Percentage of Active Seats Appointed by the President at the end of term
Kennedy 1961-1963	**1st**	67% (2 of 3)	67% (2 of 3)	0 (0%)	0% (0 of 3)
	2nd	33% (2 of 6)	56% (5 of 9)	+3 (+26%)	33% (3 of 9)
	3rd	86% (6 of 7)	100% (8 of 8)	+2(+14%)	25% (2 of 8)
	4th	33% (1 of 3)	60% (3 of 5)	+2 (+27%)	20% (2 of 5)
	5th	29% (2 of 7)	44% (4 of 9)	+2 (+15%)	22% (2 of 9)
	6th	50% (3 of 6)	33% (2 of 6)	-1 (-17%)	17% (1 of 6)
	7th	0 (0 of 6)	29% (2 of 7)	+2 (+29%)	29% (2 of 7)
	8th	43% (3 of 7)	57% (4 of 7)	+1 (+14%)	29% (2 of 7)
	9th	22% (2 of 9)	22% (2 of 9)	0 (0)	22% (2 of 9)
	10th	60% (3 of 5)	67% (4 of 6)	+1 (+7%)	33% (2 of 6)
	11th	--	--	--	--
	D.C.	67% (6 of 9)	67% (6 of 9)	0 (0)	22% (2 of 9)
TOTALS		**44% (30 of 68)**	**54% (42 of 78)**	**+12 (+10%)**	**26% (20 of 78)**
Johnson 1963-1968	**1st**	67% (2 of 3)	67% (2 of 3)	0 (0%)	66% (2 of 3)
	2nd	56% (5 of 9)	44% (4 of 9)	-1 (-12%)	22% (2 of 9)
	3rd	100% (8 of 8)	89% (8 of 9)	0 (-11%)	56% (5 of 9)
	4th	60% (2 of 5)	71% (5 of 7)	+3 (+11%)	43% (3 of 7)
	5th	44% (4 of 9)	85% (11 of 13)	+7 (+41%)	69% (9 or 13)
	6th	33% (2 of 6)	75% (6 of 8)	+4 (+42%)	63% (5 of 8)
	7th	29% (2 of 7)	63% (5 of 8)	+3 (+34%)	38% (3 of 8)
	8th	57% (4 of 7)	63% (5 of 8)	+1 (+6%)	38%(3 of 8)
	9th	22% (2 of 9)	50% (5 of 10)	+3 (+28%)	30% (3 of 10)
	10th	67% (4 of 6)	71% (5 of 7)	+1 (+4%)	29% (2 of 7)
	11th	--	--	--	--
	D.C.	67% (6 of 9)	78% (7 of 9)	+1 (+11%)	33% (3 of 9)
TOTALS		**54% (42 of 78)**	**69% (63 of 91)**	**+22 (+15%)**	**45% (41 of 91)**

forty Johnson appointees. For consistency purposes, this dissertation will follow the Goldman/Zuk et al format and consider Judge Edwards a Johnson appointee.

appoint a majority to any specific circuit, although he was able to appoint over one-fourth of the judges overall.

While President Kennedy delegated much of the responsibility of judicial appointments to others, President Lyndon Johnson took a much more active approach (Goldman 1997; McFeeley 1987). Johnson inherited a circuit court bench with a slightly Democratic advantage in the number of judges. His appointments allowed Johnson to solidify the Democratic majority and, by the end of 1968, Democratic judges filled nearly seventy-percent of the circuit's active seats. Johnson was also able to fill thirteen new judgeships, the most since Roosevelt. Three new Democratic majorities were created and the Ninth Circuit changed from strongly Republican circuit to an even balance of five Republican and five Democrats. By the end of Johnson's term, nine of the eleven circuits possessed Democratic majorities.

Particularly after the 1964 election, Johnson took a keen interest in judicial appointments, especially on an appointee's views about civil rights and foreign affairs (Goldman 1997). Therefore, aside from just changing the partisan composition, appointing his own people would have also been very important to the administration's goals. In Johnson's own terms, he wanted to know if each nominee would be an "all out J-man" (McFeeley 1987, 86). Johnson had the opportunity to fill nearly one-half (forty-five percent) of all active judgeships in the circuits. Four of the circuits, the First, Third, Fifth, and Sixth (which includes Tennessee, Kentucky, Ohio, and Michigan), were staffed with a majority of Johnson appointees. However, these Johnson majorities were short-lived. Only the Johnson majority in the First Circuit would last for more than two years after Johnson left office. The First remained a Johnson majority until 1977. However, the other three Johnson majorities were all undone by the end of 1970.

IV.IV. Composition Changes Under Presidents Nixon and Ford

President Richard Nixon often criticized the federal judiciary in his campaign to win the White House, although it appears he did not take an active role in lower court nominations (Goldman 1997). Less than one-third of the circuit court active seats were comprised of Republican judges and only one individual circuit possessed a majority of Republicans at the beginning of Nixon's first term. Before leaving office, Nixon would be able to bring a closer partisan balance to the circuit court bench, increasing the number of Republican-filled seats by nineteen. As displayed in Table 4.9 at the end of this chapter, six new seats were created by Congress during this era, and, when coupled with appointments made due to turnover, Nixon was able to increase the percentage of Republican appointees to forty-seven percent of the entire bench. Table 4.4 also depicts Nixon's influence on the individual circuits. President Nixon was able to appoint enough judges to create two new Republican majorities, one in the Third Circuit and one in the Ninth Circuit. Nixon's greatest success occurred in the Third Circuit where he filled six of the nine active judgeships. This was the only circuit in which Nixon was able to appoint a majority of the active judges. This Nixon majority was maintained in the Third Circuit until 1981. While lower judicial appointments were not a key facet of Nixon's overall policy strategies (Goldman 1997), he was able to make significant partisan gains within the circuits after the large Democratic majorities appointed by Kennedy and Johnson.

President Gerald Ford likewise did not use lower judicial appointments for policy gains (Goldman 1997). However, Ford built upon Nixon's in-roads into the circuits' Democratic majorities and by the end of 1976, the overall composition of the federal courts of appeals was composed of a majority of Republicans. In his short tenure, Ford made only twelve

Table 4.4: Influencing Circuit Court Composition: The Nixon and Ford Administrations – 1969 - 1976

President	Circuit	Percentage of Judges of the President's Party at beginning of term	Percentage of Judges of the President's Party at the end of term	Number of Seats that Change for the President's Party	Percentage of Active Seats Appointed by the President at the end of term
Nixon 1969-1974	**1st**	33% (1 of 3)	33% (1 of 3)	0 (0%)	33% (1 of 3)
	2nd	56% (5 of 9)	56% (5 of 9)	0 (0%)	44% (4 of 9)
	3rd	11% (1 of 9)	78% (7 of 9)	+6 (+67%)	67% (6 of 9)
	4th	29% (2 of 7)	29% (2 of 7)	0 (0%)	43% (3 of 7)
	5th	15% (2 of 13)	33% (5 of 15)	+3 (+18%)	20% (3 of 15)
	6th	25% (2 of 8)	44% (4 of 9)	+2 (+19%)	33% (3 of 9)
	7th	37% (3 of 8)	50% (4 of 8)	+1 (+13%)	50% (4 of 8)
	8th	37% (3 of 8)	37% (3 of 8)	0 (0)	37% (3 of 8)
	9th	50% (5 of 10)	69% (9 of 13)	+4 (+19%)	46% (6 of 13)
	10th	29% (2 of 7)	43% (3 of 7)	+2 (+14%)	43% (3 of 7)
	11th	--	--	--	--
	D.C.	22% (2 of 9)	33% (3 of 9)	+1 (+11%)	33% (3 of 9)
TOTAL		31% (28 of 91)	47% (46 of 97)	+19 (+16%)	41% (40 of 97)
Ford 1974-1976	**1st**	33% (1 of 3)	33% (1 of 3)	0 (0%)	0% (0 of 3)
	2nd	56% (5 of 9)	67% (6 of 9)	+1 (+11%)	33% (3 of 9)
	3rd	78% (7 of 9)	78% (7 of 9)	0 (0%)	0% (0 of 9)
	4th	29% (2 of 7)	14% (1 of 7)	-1 (-15%)	14% (1 of 7)
	5th	33% (5 of 15)	53% (8 of 15)	+3 (+20%)	20% (3 of 15)
	6th	44% (4 of 9)	44% (4 of 9)	0 (0)	0 (0 of 9)
	7th	50% (4 of 8)	63% (5 of 8)	+1 (+13%)	25% (2 of 8)
	8th	37% (3 of 8)	50% (4 of 8)	+1 (+13%)	13% (1 of 8)
	9th	69% (9 of 13)	69% (9 of 13)	0 (0)	15% (2 of 13)
	10th	43% (3 of 7)	43% (3 of 7)	0 (0)	0 (0 of 7)
	11th	--	--	--	--
	D.C.	33% (3 of 9)	33% (3 of 9)	0 (0)	0 (0 of 9)
TOTAL		47% (46 of 97)	53% (51 of 97)	+5 (+6%)	12% (12 of 97)

appointments to the circuit courts.[14] However, a few of these appointments were key in creating Republican majorities within the individual circuits. The Fifth and Seventh Circuits became composed of a majority of Republicans under President Ford. This is particularly surprising in the Fifth Circuit, which consisted of fifty-three percent Republican judges by the end of 1976, as just seven years earlier eighty-five percent of the Fifth was composed of Democratic judges. Congress did not assist Ford in that no new seats were created by Congress during his administration. President Ford was also unable to appoint enough seats in any one circuit to create a "Ford majority," although his twelve appointees did represent just over twelve percent of the entire circuit's active judgeships.

IV.V. Composition Changes Under President Carter

The most dramatic compositional change to the circuits in the shortest amount of time occurred under President Jimmy Carter. Rather than have to rely on replacements to influence circuit composition, Carter was able to appoint new judges under the Omnibus Judicial Act of 1978, creating a unique opportunity to shape the lower federal courts. When arriving in Washington in 1977, Carter faced a circuit court bench with a slight Republican majority overall. Of the individual circuits, five of the eleven were staffed with Republican majorities, and one, the Eighth Circuit Court of Appeals, was evenly divided among Republican and Democratic judges. Carter's ability to fill thirty-four newly created judgeships would give him ample opportunity to sway the partisan composition of the circuits. Carter's appointments created a Democratic majority, with eighty-two Democratic judges out of a possible one-hundred and

[14] There is some disagreement over whether to consider nominees that were appointed by President Nixon in 1974 but that were not confirmed until after his resignation as Nixon or Ford appointees. Murry Gurfein, a Second Circuit appointment is one such nomination. Scholars, such as Sheldon Goldman (1997) and Barrow, Zuk, and Gryski (1997), categorize Gurfien as a Ford appointee while the Federal Judicial Center categorizes Gurfien as a Nixon appointee. For purposes of this analysis, Gurfien is considered a Ford appointee, bringing the number of Ford's circuit court appointments to twelve.

Table 4.5: Influencing Circuit Court Composition: The Carter Administration – 1977 - 1980

President	Circuit	Percentage of Judges of the President's Party at beginning of term	Percentage of Judges of the President's Party at the end of term	Number of Seats that Change for the President's Party	Percentage of Active Seats Appointed by the President at the end of term
Carter 1977-1980	1st	66% (2 of 3)	75% (3 of 4)	+1 (+9%)	50% (2 of 4)
	2nd	33% (3 of 9)	36% (4 of 11)	+1 (+3%)	18% (2 of 11)
	3rd	22% (2 of 9)	40% (4 of 10)	+2 (+18%)	20% (2 of 10)
	4th	86% (6 of 7)	90% (9 of 10)	+3 (+14%)	40% (4 of 10)
	5th	47% (7 of 15)	68% (17 of 25)	+10(+21%)	60%(15 of 25)
	6th	56% (5 of 9)	64% (7 of 11)	+2 (8%)	55% (6 of 11)
	7th	37% (3 of 8)	44% (4 of 9)	+1 (+7%)	11% (1 of 9)
	8th	50% (4 of 8)	63% (5 of 8)*	+1 (+13%)	25% (2 of 8)
	9th	31% (4 of 13)	65% (15 of 23)	+11 (+34%)	65% (15 of 23)
	10th	57% (4 of 7)	75% (6 of 8)	+2 (+18%)	38% (3 of 8)
	11th	--	--	--	--
	D.C.	66% (6 of 9)	73% (8 of 11)	+2 (+7%)	36% (4 of 11)
TOTAL		47% (46 of 97)	63% (82 of 130)	+36 (+16%)	43% (56 of 130)

thirty active seats. President Carter created three new Democratic majorities in the Fifth, Eighth, and Ninth Circuits, as shown in Table 4.5. Further, Carter's appointments to the old Fifth Circuit were crucial in creating a Democratic majority in the newly formed Eleventh Circuit (which contains Florida, Georgia, Tennessee, and Alabama, leaving Texas, Louisiana, and Mississippi in the Fifth Circuit). The Eleventh Circuit began hearing cases on October 5, 1981 (Barrow and Walker 1988), with a seven-to-five Democratic majority, seven of which were Carter appointees. Thus, counting the newly formed Eleventh Circuit, by the end of 1981 nine of the now twelve circuits included a majority of Democratic judges on the bench.

As far as appointing his own people to the circuits, Carter possessed a clear intent to diversify the federal bench in terms of its racial and gender composition (Goldman 1980;

Slotnick 1980, Walker and Barrow 1985;). However, his appointees were also largely Democratic, nominating only five Republicans to the circuits. One of these Republican appointees, Judge Amalya Lyle Kearse, while not a Democrat, was an African-American female, and helped Carter in meeting his pledge to diversify the bench. Counting the newly formed Eleventh Circuit, four of the twelve circuits were filled with a majority of Carter appointees. The Carter majority in the new Fifth Circuit and the Sixth Circuit continued until 1982, at which time both circuits became evenly divided among Carter appointees and those appointed by other administrations. The Carter majorities created in the Ninth and Eleventh Circuits were sustained for a somewhat longer time, lasting until 1986.

IV.VI. Composition Changes Under Presidents Reagan and George H.W. Bush

The partisan and ideological gains made by President Carter based in part on the expansion of the circuit bench were largely temporary. President Ronald Reagan would also take advantage of newly created seats, as Congress passed the Judgeship Bill of 1984 (98 Stat. 333 (1984)), as well as the normal turnover of judges between 1981 and the end of 1988. When President Reagan entered the White House in 1981, the circuit bench was staffed largely with Democrats, as Republican judges composed only thirty-seven percent of the circuit bench. President Reagan possessed the opportunity to nominate twenty-five judges to newly created seats, including one newly created seat that remained open from the Carter Administration. New positions and normal turnover allowed Reagan to create an overall Republican majority on the circuit courts, as sixty-two percent of circuit seats were filled with Republicans by 1989. Reagan was able to flip the ratio of Republican to Democratic judges from a strong Democratic advantage to a nearly identical Republican advantage in less than eight years. As for the individual circuits, Reagan made significant partisan gains, creating eight Republican majorities

in circuits that had been controlled by Democrats and creating an equal split between Republicans and Democrats in the First Circuit, which previously had a Democratic advantage. In the newly formed Fifth Circuit, for example, the Democrats enjoyed a nine-to-four advantage at the beginning of 1981. However, Reagan was able to appoint eight judges to this circuit, creating a ten-to-six Republican advantage. Even in the Ninth Circuit, where the Carter Administration had its greatest chance to influence the bench by appointing fifteen judges, this Democratic advantage in active-status judges was brief, as President Reagan was able to fill five new seats and replaced two Carter-appointed judges that assumed senior status. Thus, by the end of 1988, Republican appointees held a majority of active status seats, with a fourteen to twelve advantage over the Democrats in the Ninth, with one independent judge appointed by Carter. These changes are reflecting in Table 4.6, which displays the circuit court composition changes during the Reagan and Bush administrations.

Aside from creating partisan advantages in most of the individual circuits, the large number of Reagan appointments could also have an impact on specific issues important to his administration. By the end of his second term, President Reagan had appointed nearly every other circuit court judge (forty-eight percent). Seventy-four out of one-hundred, fifty-four active seats were filled with Reagan appointees. Seven of the twelve individual circuits were staffed with a majority of Reagan judges. Three of these Reagan majorities, the Second, Sixth, and the D.C. Circuits, lasted only until 1990. The Eighth and Tenth Circuit Reagan majorities lasted until 1994 and 1995, respectively. The Reagan majority in the Third Circuit continued until 1997 and, most surprisingly, as of May 2007, six out of eleven judges currently serving on the Seventh Circuit are Reagan appointees, nearly two decades after the end of his administration. The Judgeships Bill of 1984 and Reagan's ability to serve two terms allowed Republicans to

Table 4.6: Influencing Circuit Court Composition: The Reagan and Bush Administrations – 1981 – 1992

President	Circuit	Percentage of Judges of the President's Party at beginning of term	Percentage of Judges of the President's Party at the end of term	Number of Seats that Change for the President's Party	Percentage of Active Seats Appointed by the President at the end of term
Reagan 1981-1988	**1st**	25% (1 of 4)	50% (3 of 6)	+2 (+25%)	33% (2 of 6)
	2nd	64% (7 of 11)	69%(9 of 13)	+2 (+5%)	54% (7 of 13)
	3rd	60% (6 of 10)	75% (9 or 12)	+3 (+15%)	67% (8 of 12)
	4th	10% (1 of 10)	36% (4 of 11)	+3 (+26%)	26% (3 of 11)
	5th [15]	31% (4 of 13)	63% (10 of 16)	+7 (+40%)	50% (8 of 16)
	6th	36% (4 of 11)	73% (11 of 15)	+7 (+37%)	53% (8 of 15)
	7th	56% (5 of 9)	82% (9 of 11)	+4 (+26%)	64% (7 of 11)
	8th	37% (3 of 8)*	67% (6 of 9)*	+3 (+30%)	67% (6 of 9)
	9th	35% (8 of 23)	52% (14 of 27)*	+6 (+15%)	37% (10 of 27)
	10th	25% (2 of 8)	60% (6 of 10)	+4 (+35%)	60% (6 of 10)
	11th	42% (5 of 12)	58% (7 of 12)	+2 (+16%)	17% (2 of 12)
	D.C.	27% (3 of 11)	58% (7 of 12)	+4 (+31%)	58% (7 of 12)
TOTAL		37% (48 of 130)	62% (95 of 154)	+47 (+25%)	48% (74 of 154)
George H.W. Bush 1989-1992	**1st**	50% (3 of 6)	83% (5 of 6)	+2 (+33%)	50% (3 of 6)
	2nd	69% (9 of 13)	85% (11 of 13)	+2 (+16%)	23% (3 of 13)
	3rd	75% (9 of 12)	92% (11 of 12)*	+2 (+10%)	23% (3 of 13)
	4th	36% (4 of 11)	46% (6 of 13)	+2 (+10%)	36% (4 of 13)
	5th	63% (10 of 16)	85% (11 of 13)	+1 (+22%)	31% (4 of 13)
	6th	73% (11 of 15)	71% (10 of 14)*	-1 (-2%)	21% (3 of 14)
	7th	82% (9 of 11)	82% (9 of 11)	0 (0)	9% (1 of 11)
	8th	67% (6 of 9)*	82% (9 of 11)	+3 (+15%)	27% (3 of 11)
	9th	52% (14 of 27)*	54% (15 of 28)	+1 (+2%)	14% (4 of 28)
	10th	60% (6 of 10)	64% (7 of 11)	+1 (+4%)	9% (1 of 11)
	11th	58% (7 of 12)	67% (8 of 12)	+1 (+9%)	33% (4 of 12)
	D.C.	58% (7 of 12)	64% (7 of 11)*	0 (+6%)	18% (2 of 11)
TOTAL		62% (95 of 154)	70% (109 of 155)	+14 (+8%)	22% (35 of 155)

[15] Values for President Reagan represent judges on the 5th Circuit after the creation of the 11th Circuit Court of Appeals

control their largest proportion of judicial positions since 1932. This facet is made even more surprising, given the high number of new appointments made by the Carter Administration under the Omnibus Judgeship Act of 1978 and the Democratic gains that followed.

When President George H.W. Bush assumed office in 1989, Republican judges already filled sixty-two percent of the circuit court judgeships. Similar to President Truman, who came to office following an era of great Democratic expansion in the circuits, much of the work of rebalancing the circuits along partisan lines and/or creating new majorities for one's won party had already been done by the previous administration. However, President Bush was able to make partisan gains in the circuits, and by the end of 1992, seven out of every ten circuit court judges was a member of the Republican Party or an independent appointed by a Republican president. In less than twelve years, the circuit bench had been transformed from a strong Democratic majority to an overwhelmingly Republican court. Further, by one estimate examining all federal courts, by the end of 1992, ninety-five percent of the Republicans appointed to the federal bench (including the districts, circuits, and U.S. Supreme Court) were either a Reagan or a Bush appointee (Barrow, Zuk, Gryski 1996, 2). Following President Bush's term in office, eleven out of the twelve circuits maintained Republican majorities, with only the Fourth Circuit Court of Appeals possessing a slim Democratic majority, seven Democratic judges and six Republican judges. Even with several circuit seats left open at the end of his term, President Bush was still able to make substantial partisan gains in individual circuits and for the bench as a whole. Since serving just one term and, unlike President Carter, only having the ability to fill five newly created seats to the circuit courts, President Bush was unable to appoint a majority of judges to any individual circuit. However, with appointing nearly one-

forth of the circuit seats (twenty-two percent), Bush was able to expand the ideological and partisan reconstruction of the federal bench, particularly in the circuit courts.

IV.VII. Composition Changes Under President Clinton

President Bill Clinton entered office with a federal judiciary composed of more than twice as many Republicans as Democrats. With his own political party making-up just thirty-percent of the circuit seats, it would have appeared very unlikely in 1993 that Clinton could undo the partisan gains created during the past two administrations, particularly if Clinton would have the unfortunate condition of serving only one term as did his Democratic predecessor, President Carter. However, Clinton was successful in his 1996 bid for reelection and, along with the creating of six new judicial positions that he was able to fill, Clinton was able to appoint many Democrats to the bench, almost achieving an equal number of Democratic and Republican judges. At the end of 2000, with many seats still vacant, Clinton was able to pick up twenty-four seats for the Democrats, but left a slight Republican majority in the circuits, with seventy-one Democrats and seventy-seven Republicans overall. Within the individual circuits, Clinton created three new Democratic majorities (the Second, Sixth, and Ninth Circuits), with two other circuits (the Fourth and Tenth) composed of equal numbers of Democrats and Republicans.

As for his own appointees, Table 4.7 shows that President Clinton successfully appointed forty percent of the active judges across all circuits. This allowed him to establish his own "Clinton majorities" within two individual circuits. Clinton appointed nine of thirteen judges in the Second Circuit and fourteen of twenty-six judges in the Ninth Circuit, although some seats on the Ninth were left unfilled at the end of Clinton's term. By 2003, President George W. Bush had filled these open seats, erasing the Clinton majority in the Ninth Circuit. However, the Clinton majority in the Second Circuit still exists, as of May 2007. Given the strong Republican

majorities from the Reagan and Bush administrations and the fact that Clinton was not presented with a large omnibus judgeship bill, as were Carter and Reagan, Clinton's ability to make Democratic gains over an eight year period are worthy of note.

Table 4.7: Influencing Circuit Court Composition: The Clinton Administration 1993 – 2000

President	Circuit	Percentage of Judges of the President's Party at beginning of term	Percentage of Judges of the President's Party at the end of term	Number of Seats that Change for the President's Party	Percentage of Active Seats Appointed by the President at the end of term
Clinton 1993-2000	1st	17% (1 of 6)	17% (1 of 6)	0 (0%)	33% (2 of 6)
	2nd	8% (1 of 12)*	62% (8 of 13)	+6 (47%)	69% (9 of 13)
	3rd	15% (2 of 13)	38% (5 of 13)*	+3 (+23)	38% (5 of 13)
	4th	54% (7 of 13)	50% (6 of 12)*	-1 (-4%)	33% (4 of 12)
	5th	15% (2 of 13)	33% (5 of 15)*	+3 (+18%)	27% (4 of 15)
	6th	29% (4 of 14)*	58% (7 of 12)*	+3 (+29%)	42% (5 of 12)
	7th	18% (2 of 11)	27% (3 of 11)	+1 (+9%)	27% (3 of 11)
	8th	18% (2 of 11)	40% (4 of 10)*	+2 (+22%)	20% (2 of 10)
	9th	46% (13 of 28)	62% (18 of 26)*	+5 (+16)	54% (14 of 26)
	10th	36% (4 of 11)	50% (5 of 10)*	+1 (+14%)	40% (4 of 10)
	11th	33% (4 of 12)	45% (5 of 11)	+1 (+12%)	36% (4 of 11)
	D.C.	36% (4 of 11)*	44% (4 of 9)*	0 (+8%)	33% (3 of 9)
TOTAL		30% (46 of 155)	48% (71 of 148)	+24 (+10%)	40% (59 of 148)

. IV.VIII: Composition Changes Under President George W. Bush

President George W. Bush began his presidency with a Republican circuit bench, although not nearly as strongly favoring his political party as his father had enjoyed in 1989. With many seats left unfilled from the Clinton Administration, President Bush possessed an instant opportunity to solidify the Republican majority in the courts of appeals. However, with the partisan switch of Republican Senator Jim Jeffords who become an independent in early 2001, Bush now faced a Democratically controlled Senate. Given the long delays during the Republican-controlled Senate of the late 1990s concerning the Clinton appointees (Binder and Maltzman 2002) and the

other obstructions sometimes shown under periods of divided government (Martinek, Kemper, and Van Winkle 2002), it was not surprising that several open seats held-over from the Clinton Administration remained unfilled several years into Bush's presidency. In fact, several of the openings that arose during the Clinton presidency in the Fourth Circuit Court of Appeals are still unfilled (Federal Judicial Center), even given the return to a Republican controlled Senate in 2002. However, President Bush has been able to increase the Republican majority in the circuits, increasing the percentage of seats filled by Republican judges to fifty-nine percent. Bush has accomplished these gains through turnover, as no new seats have been created for the courts of appeals during his presidency. If this trend continues, President Bush would be only the second president since the circuit courts were created in 1891 to serve a full term without the opportunity to fill a newly created seat in the circuit courts.[16] The only other president to serve a full term and be unable to fill a new circuit court judgeship was Woodrow Wilson (Federal Judicial Center). Given the number of current seats still unfilled and the Democratic Congress elected in 2006, it appears Bush will likely earn this distinction.

As for the individual circuits, Table 4.8 displays President Bush's ability to create two new Republican majorities, one in the Sixth Circuit and one in the Tenth Circuit. As of May 2007, nine of the twelve circuits possess a majority of Republican judges. Although he has been able to fill thirty-one percent of the currently occupied active seats, President Bush has, to date, only been able to appoint a majority of judges in one circuit, the Eighth, although he has also appointed six of twelve judges in the Tenth Circuit.

[16] As mentioned above, President Ford also did not appoint any judges to newly created positions, although he also did not serve a full term as president.

Table 4.8: Influencing Circuit Court Composition: The George W. Bush Administration 2001 – May 2007

President	Circuit	Percentage of Judges of the President's Party at beginning of term	Percentage of Judges of the President's Party at the end of term	Number of Seats that Change for the President's Party	Percentage of Active Seats Appointed by the President at the end of term
George W. Bush 2001- May 2007	1st	83% (5 of 6)	80% (4 of 5)	-1 (-3%)	17% (1 of 6)
	2nd	38% (5 of 13)*	33% (4 of 12)*	-1 (-5%)	33% (4 of 12)
	3rd	62% (8 of 13)	58% (7 of 12)*	-1 (-4%)	42% (5 of 12)
	4th (17)	50% (6 of 12)*	50% (6 of 12)*	0 (0%)	25% (3 of 12)
	5th	67% (10 of 15)*	73% (11 of 15)*	+1 (+6%)	20% (3 of 15)
	6th	42% (5 of 12)*	57% (8 of 14)*	+3 (15%)	43% (6 of 14)
	7th	73% (8 of 11)	73% (8 of 11)	0 (0)	9% (1 of 11)
	8th	60% (6 of 10)*	82% (9 of 11)	+3 (+22%)	64% (7 of 11)
	9th	38% (8 of 26)*	44% (12 of 27)*	+4 (+6%)	26% (7 of 27)
	10th	50% (5 of 10)*	58% (7 of 12)	+2 (+8%)	50% (6 of 12)
	11th	55% (6 of 11)	58% (7 of 12)	+1 (+3%)	8% (1 of 12)
	D.C.	56% (5 of 9)*	70% (7 of 10)*	+2 (+14%)	30% (3 of 10)
TOTAL		52% (77 of 148)	59% (90 of 154)	+13 (+7%)	31% (47 of 154)

IV.IX. Conclusions Concerning Composition Changes and Presidential Influence

Clearly, a president's ability to influence public policy through the courts will depend on their ability to make nominations. This will depend on many factors, several of which are outside of the president's control. Normal turnover, the addition of newly created judicial positions, and the composition of the circuits before the president's inauguration are clearly factors limiting a president's control over circuit court personnel. Despite these outside factors, we do see that six presidents since Franklin Roosevelt have been able to flip the partisan majority of the circuit courts as a whole. Presidents Roosevelt, Eisenhower, Kennedy, Ford, Carter, and

[17] President Clinton originally granted one appointee to the Fourth Circuit, Roger Gregory, a recess appointment in December of 2000. In May 2001, President Bush appointed him to a full position and the Senate confirmed Gregory in July 2001 (Federal Judicial Center). Following the Goldman/Zuk et al rational used above, Gregory is categorized as a Bush appointee for the purposes of this study.

Reagan entered office with a majority of the judges in the federal courts of appeals belonging to the opposing political party and were able to change the circuit's overall partisan majority by the end of their administrations. Presidents Truman, Johnson, and George H.W. Bush all came to office after serving as Vice-President for previous administrations that had made significant partisan gains for their political party. Although not following an administration of his own party, George W. Bush also did not have the opportunity to change the majority, although he and each of the former Vice-Presidents made further partisan gains for their party. President Nixon was not able to shift the partisan balance of the circuits during his shortened time as president, although President Ford was able to do so while finishing Nixon's second term. It would be safe to presume that had Nixon finished his second term following his 1972 re-election, he would have been responsible for creating a Republican majority instead of Ford.

With the exception of President Nixon who did not finish his second term, President Clinton was the only president to come to power with an opposing party controlling the circuits who was unable to create an overall majority in his party's favor. If we consider the Ford and Nixon Administrations together, this means that five out of six administrations that had the opportunity to change the majority party in the circuit courts were successful at shifting the partisan balance. Several factors may explain why President Clinton is alone in this regard. First, not only did Clinton battle with a Republican Senate for most of his tenure, but the Senate also created extensive delays and blocked many of Clinton's appointees (Binder and Maltzman 2002). This left many open seats unfilled by the end of 2000. While Clinton's appointees were greeted with unprecedented scrutiny and delay for lower court appointments, President Clinton's frustrations with the Senate over judicial nominations may in fact become the norm, as future presidents may find it more difficult to fill lower judicial positions in the current policy and

partisan-charged era of lower court appointments (Slotnick 2002). Clinton also faced a judiciary stacked against him by twelve years of Republican appointees. While some recent presidents have been able to overcome unfavorable partisan majorities such as Kennedy, Carter, and Reagan, these presidents came to office after eight years or less of the other party controlling the White House. Thus, twelve years of nominations from one party may be too much for one administration, even serving two terms, to overcome.

Aside from influencing the circuit court majority as a whole, presidents have been able to create new partisan majorities in the individual circuits forty-one times since 1933. This means a president will generally be able to shift the partisan majority of about two circuits per four-year term in office. While small, these shifts could create substantial differences in the composition of the three-judge panels and also may be more or less important depending on the composition of the remaining circuits. For example, President Johnson was able to change the partisan majority in only three circuits. However, these three new Democratic majorities assured that all of the circuits except the Ninth possessed Democratic majorities. As Velona (2005) suggests, this may have had a major impact on the three-judge panels in all the circuits and thus greatly influenced the decisions made in these circuits.

As far as possessing the ability to appoint their own majorities on the court, only Presidents Roosevelt and Eisenhower were able to appoint a majority of their own appointees to the circuit bench as a whole. President Reagan almost achieved this feat, as he appointed forty-eight percent of all active circuit seats during his administration. While only two out of the twelve administrations in this study appointed a majority of the active seats on the bench, the presidents collectively have been able to appoint their own majorities to the individual circuits thirty-eight times since 1933. This means a president will generally be able to appoint a majority

of their own appointees to two circuits per four-year term in office. Examining the length of time these cohort majorities are maintained in the individual circuits, we see that on average these majorities appointed by a single president remain in the individual circuits for about six years and two months after the president leaves office. Thus, presidents have a clear opportunity to shape the policy stemming from these circuits for several years, although extensive long-term policy influence may be limited.

While presidents have an opportunity to shape the partisan and ideological composition of the circuits, many of the factors controlling the magnitude of these changes are out of the president's control. Thus, controlling the compositions of the courts appears as a rather unstable device for increasing the president's ability to shape policy for an extended period. For example, the partisan gains achieved by the Carter Administration were undone in less than eight years after the election of Ronald Reagan in 1980. Still further, controlling the partisan composition of the circuits or even appointing large numbers of one's own appointees does not assure that those judges will support policies that the president would support. To analyze this facet, we must examine the judicial behaviors and determine their relationship, if any, with the president's policy preferences.

Table 4.9 : Newly Created Judgeship on the U.S. Courts of Appeals through the Administrations of Franklin Roosevelt to George W. Bush

President	Circuit												
	1st	**2nd**	**3rd**	**4th**	**5th**	**6th**	**7th**	**8th**	**9th**	**10th**	**11th**	**DC**	***Total***
Roosevelt	0	1	1	0	2	2	1	2	3	0	0	1	***13***
Truman	0	0	2	0	0	0	1	0	2	1	0	3	***9***
Eisenhower	0	0	0	0	1	0	0	0	2	0	0	0	***3***
Kennedy	0	3	1	2	2	0	1	0	0	1	0	0	***10***
Johnson	0	0	1	2	4	2	1	1	1	1	0	0	***13***
Nixon	0	0	0	0	2	1	0	0	3	0	0	0	***6***
Ford	0	0	0	0	0	0	0	0	0	0	0	0	***0***
Carter	1	2	1	3	10	2	1	1	10	1	0	2	***34***
Reagan	2	2	2	1	3	4	2	1	5	2	0	1	***25***
G.H.W. Bush	0	0	1	2	0	0	0	1	0	1	0	0	***5***
Clinton	0	0	1	2	1	1	0	0	0	1	0	0	***6***
G.W. Bush II	0	0	0	0	0	0	0	0	0	0	0	0	***0***

CHAPTER V

JUDICIAL BEHAVIORS, PRESIDENTIAL POLICY PREFERENCES, AND IDEOLOGICAL CONCORDANCE

While appointing circuit court judges who will remain on the bench for long periods and being able to influence the compositions of the circuits provide some means to measure a president's long-term influence on the circuits, these findings allow us to make only broad statements about a president's policy influence through their nominations. In fact, it is how the judges behave once they are on the bench that will determine if judicial nominations provide the president with any long-term means to influence public policy. An appointee that consistently votes to support the policies and goals that the appointing president would support could give the president some influence over public policy long after the president leaves office. However, if a president is incorrect in their predictions of how a judicial appointee may behave in the future, then those appointees could decide cases in ways that are inconsistent with the appointing president's policy goals. Similarly, if a judge's behavior changes over time, then a president's ability to shape public policy through his appointments may be merely a short-term influence.

Indeed, there have been judicial appointees that have frustrated their nominating presidents because of the decisions they made once they were on the bench. According to one current Supreme Court justice, "If a president thinks by appointing a judge he's going to get a decision he wants a certain way, he's in for a disappointment" (Breyer 2007). When asked about the decisions of Justice Oliver Wendell Holmes, President Theodore Roosevelt remarked that his appointee was an "utter disappointment" (McFeeley 1987, 3) and that he could "carve out of a banana a Judge with more backbone" than Holmes (Clayton 1964, 47). When asked if he had

ever made any mistakes, President Eisenhower once commented, "Yes, two, and they are both sitting on the Supreme Court" (McFeeley 1987, 3).

Yet, recent studies appear to indicate that these disappointments may be the exception rather than the rule and that appointees generally vote consistently with presidential preferences. As mentioned above, prior studies suggest that judges appointed by different presidents do behave differently whether comparisons are made based on partisanship (Goldman 1975; Rowland and Carp 1996; Rowland and Todd 1991; Songer and Davis 1990), by using a cohort analysis (Scherer 2005; 2001), or by creating other variables to represent various presidents and/or their policy goals (Rowland, Songer, and Carp 1988; Songer and Haire 1992; Tate and Handberg 1991). For example, Rhode and Spaeth's (1976) examination of Supreme Court behaviors suggests that justices voted with the preferences of the appointing president over seventy-five percent of the time.

Therefore, to examine a president's overall influence on public policy through the courts, we must determine two things. First, are presidents successful in selecting likeminded judges that will generally support the policy preferences that the president would support were the president deciding the cases. Second, if presidents are successful in selecting likeminded judicial appointees, are the judges' behaviors consistent with the presidential preferences over the judges' careers. This consistency between the president's policy preferences and the judicial actions has been referred to as ideological concordance (Segal, Timpone, and Howard 2000; Kuersten and Songer 2003). As other researchers have also stated, this is not necessarily a causational relationship. As one group of researchers noted, concordance is "the relative agreement between judicial behavior and presidential policy preferences," as opposed to causation or responding directly to the president, which "suggests that presidential preferences

directly influence justices' [or judges'] decisions. Concordance only requires that the justices act in agreement with presidential preferences" (Segal, Howard, Timpone 2000, 558). It is possible that judges will act directly in response to the president's goals. For example, one White House memo to President Johnson concerning a possible judicial nominee noted that:

> With judges, who after this lifetime appointment are removed from the political arena, appreciation for the appointment and outstanding service on the bench are most important . . . He [the potential nominee] is committed to the Administration's programs, I know that he will be everlasting grateful for the appointment. (McFeeley 1987, 47)

From this quote, it is clear that members of the Johnson Administration expected the future judge to support the President's programs based on his prior commitment to those programs and his gratitude to Johnson for the position. However, concordance does not necessarily have to be as direct. A judges' decisions could be consistent with the appointing president's policy preferences because the president merely appoints someone with shared values. However, the policy implications may be the same, as the judicial behaviors would support the appointing president's policy goals whether there is a direct or indirect link.

Two recent studies have more fully explored the idea of ideological concordance. At the Supreme Court level, ideological concordance between appointing president's preferences and judicial decision appears strong at the beginning of a justice's career, but the relationship weakens over time (Segal, Timpone, and Howard 2000). In this Supreme Court study, the authors find that the more liberal the appointing president, the more likely that president's appointees will support liberal outcomes overall. However, when the authors examine judicial voting across different eras of the judges' careers, they find that ideological concordance is not consistent across time. The authors find that with civil liberties cases, ideological concordance appears to fade after the justice has been on the Supreme Court for five or more years. For economic cases, this relationship exists until the justice serves ten years, and then appears to

weaken. Segal, Timpone, and Howard (2000) use as their dependent variable an overall voting record, namely the percentage of time a justice supports the liberal position. One key limitation on the authors' work is that although they do examine time, they did not include any other control variables to account for alternative influences on the justices' behaviors.

The second study partially replicates Segal, Timpone, and Howard's (2000) research, but applies their ideas and techniques to the federal courts of appeals. Kuersten and Songer's (2003) examination of policy concordance finds a relationship between the president's policy preferences and career voting records of circuit court judges. The authors also use as their dependent variable the percentage of votes supporting the liberal position over the entire career of the judge based on a random sample of circuit court cases. However, while the Supreme Court analysis did not include any control variables, Kuersten and Songer (2003) include other independent variables in their models to control for alternative influences on judicial behaviors, such as senatorial courtesy. However, the circuit court study does not examine this relationship between the president's policy preferences and judicial behaviors over different time periods, but merely examines the relationship over the entire judge's career. Even controlling for some other factors, the authors again find that the more liberal the appointing president the more likely their appointees will support liberal outcomes. The study does not fully examine a possible decay in this relationship, although they do find that the relationship exists overall. Therefore, a more in-depth analysis is needed to assess ideological concordance at the circuit court level, specifically to examine whether ideological concordance is consistent across the judge's career.

Although these studies suggest the existence of this consistency between judicial behaviors and policy preferences, if judges' individual preferences change over time, this could lead to the loss of policy concordance, which could lessen a president's legacy through the

courts. Studies of individual justices and anecdotal evidence suggest that ideological change has occurred among particular justices such as Harry Blackmun (Kobylka 1985) and Hugo Black (Ulmer 1973). Perhaps most famously is Justice Owen Roberts who seemingly changed from a pro-business stance to a supporter of New Deal policies overnight, as he is credited as being the "switch in time that saved nine" during the Roosevelt court-packing plan (see Friedman 2000).

However, more recent studies have attempted to find preference change across a wider array of judges and justices. One early study examining possible preference changes noted that most of the variation in outcomes on the Supreme Court stemmed from personnel changes, but that some changes in outcomes "included at least some element of change in the voting behavior of continuing members" (Baum 1992, 21). Epstein et al (1998) find significant changes over time in the voting preferences of several justices, although these changes were not present in all justices nor did they always seem to change in a linear fashion. Using an analysis that compares justices' behaviors to an ideological ideal point that changes from term to term (Martin and Quinn 2002), Epstein et al (2007) find further evidence of preference changes among twenty-two out of twenty-six Supreme Court justices serving since 1937. The use of changing ideal points allowed the authors to control for the changing context of cases so that the changes in individual preferences of the justices can be isolated and examined. While a plurality of the Supreme Court justices shifted to more liberal preferences, the authors found that some did become more conservative, while still others oscillated back and forth. Although the authors do not provide clear explanations among the many possibilities as to why this change occurs, the implications from their study are clear: if presidents want to achieve long-term policy influence through their judicial appointees, they may face an uphill battle if judges and justices are inconsistent in their behaviors over their careers.

While it may be beyond the scope of this dissertation, several explanations could account for this change in judicial voting and the corresponding decay in political concordance between judicial behaviors and the appointing president's preferences. First, early in their careers a judge may feel a sense of loyalty to the appointing president. As the White House memo quoted above from the Johnson Administration notes, appointees may feel a sense of personal gratitude to the nominating president. This gratitude may result in the appointee initially supporting the president's programs and policy goals. However, as time passes, the president leaves office, and the feelings of loyalty wane, the feelings of an obligation support the president's positions may also decrease, causing the appointee's behaviors to move away from the appointing presidents' policy goals.

A second aspect, stemming from social psychology suggests that appointing presidents may also act as "cue-givers" which provide information to appointed judges, thus influencing judicial decision-making (see Lupia 2002). Once the cue-giving administration leaves office, the appointee may be more influenced by other factors or their own policy preferences. For example, Whitford and Yates (2003) found that the cues given by presidents through their personal statements influence federal attorneys' handling of drug cases. When the president made more statements referencing drug problems in the nation, federal prosecutors took notice and increased their efforts to enforce drug laws. While distinctions can be made between prosecutors and the independence of federal judges, Whitford and Yates' (2003) study shows that the president's signals can have policy impact to other political actors.

Third, intra-circuit influences may also become more important later in the judge's career. For example, more senior members of the court may influence new judges through socialization, influencing their views on procedures and substantive issues. Research on the

courts of appeals suggests much of the training and socialization of lower court judges may stem from their early interactions with their fellow judges (Howard 1981). Over time, once judges are exposed to existing values, attitudes, and behaviors of an established court structure and their peers, their own attitudes, opinions, and views may be influenced (Wasby 1989). Thus, we must also assess the influences that the circuits themselves may have on the judges' behaviors.

Further, developing scholarship examining judicial behaviors and mass public opinion suggests that judges and justices may be responsive to changes in public attitudes. Some studies have found co-variation between public opinions and decisions made by the courts. For example, using a time series analysis, Mishler and Sheehan (1993) find that, on the aggregate level, Supreme Court decisions appear to follow public opinion, although there may be a lag as the Court catches-up to popular views. The authors did note, however, that for the 1980s, these trends did not appear, although the trends were present in the remainder of their study, which included 1956-1989. However, responding to Mishler and Sheehan (1993), others argue that the changes in court policies that appear to track changes in popular opinion are actually due to changes in court personal (Norpoth and Segal 1994). In their critique, Norpoth and Segal (1994) argue that the use of lags overstates the possible relationship between public opinion and aggregate court data. Similar to Dahl's (1957) arguments, Norpoth and Segal (1994) argue that the courts are always close to public opinion and the preferences of the ruling majority since judicial turnover must go through the popularly elected president and the Senate. In their response (Mishler and Sheehan 1994) and in a subsequent study, Mishler and Sheehan (1996) conducted a study on the influence of popular opinion on individual justices. In the authors' analysis of individual votes from 1953-1992, they find that for some justices, popular opinion does play a significant role in altering their behaviors, even after controlling for changes in the

Supreme Court's composition (Mishler and Sheehan 1996). In a more recent study examining only those cases where the Supreme Court reverses the lower court decisions, McGuire and Stimson (2004), find even stronger evidence for the Supreme Court's responsiveness to public opinion. If judicial preferences are influenced by popular opinion, then judges' behaviors may move away from presidential policy preferences as those presidents leave office and the public, as a whole, also moves away from the nominating president's preferences.

While this is not an exhaustive list of reasons why policy concordance may decay over time, it provides several theoretical justifications for why this decay may occur. The purpose of this chapter is first to establish if policy concordance occurs at all. While prior research appears to suggest this may occur, recent updates in data collection allow us to examine this principle in more depth and with more controls for alternative influences on judicial behaviors in the circuit courts. Secondly, this chapter answers the question, if policy concordance exists, does it remain constant over the judges career. If the answer is yes, then nominations indeed provide a valuable tool by which presidents may influence public policy for many years after they leave the White House. If the answer is no, then perhaps a president's long-term influence is much more limited than many suggest. While it is beyond the scope of this dissertation to determine why this decay occurs or to find a definitive answer as to why judicial behaviors may change over time, the foregoing theory will guide the analyses that follow.

Given this prior research and theory, this chapter proceeds with the following expectations:

1. *As the liberalism of the president increases, the likelihood that a judge appointed by that president will vote for liberal case-outcomes also increases.* The converse would also be

true: presidents that are more conservative will appoint judges that will more likely hand down conservative rulings.

2. Given our prior understanding about diminishing loyalty, cue-theory, judicial socialization, and possible changes in judges' ideology over time, *if this relationship between presidential ideology and judicial decision-making exists, this relationship should decay over time*.

V.I. Data

The data for this analysis of judicial voting and presidential preferences stem from two extensive databases. The first is the Attributes of U.S. Appeals Court Judges (Zuk, Barrow, and Gryski 1997), which includes many individual characteristics of judges on the United States Courts of Appeals as well as their terms of service. As stated above, these records were supplemented with information from the Federal Judicial Center's web page (www.fjc.gov) to assure that information such as appointing president and the years of service were correct. The second database used for this analysis is the United States Courts of Appeals Database (Songer 1997).[16] The original Court of Appeals Database included a random sample of published cases from each circuit for years 1925 to 1988. An update was completed that added cases from 1989 to 1996. A second update now includes cases through 2002. These added years along with the original database provide a broader range of years and appointee votes. Both the original

[16] The Multi-User Database on the U.S. Courts of Appeals containing published appellate opinions from 1925 to 1996 is available at http://www.as.uky.edu/polisci/ulmerproject/appctdata.htm. The updated database is available at http://www.wmich.edu/nsf-coa/. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the National Science Foundation.

database (SES-8912678) and the current update through 2002 (SES-0318349) are funded by the National Science Foundation. Both datasets have been used extensively in previously published studies that examined trends in the circuit courts (e.g. Giles, Hettinger, and Peppers 2001; Hettinger, Lindquist, and Martinek 2006; Songer and Ginn 2002; Songer and Haire 1992; Songer, Sheehan, and Haire 2000).

These two sources, one including only circuit judge characteristics and one that examines cases, share a unique identifying number for each individual judge. Therefore, it was possible to merge the two datasets after transforming the Court of Appeals Database from case-level data to the individual judge's votes using STATA reshape commands. Reshaping the data and adding the judge's characteristics allows us to examine individual factors that may have influenced each judicial vote, including any differences among presidential appointments. However, several errors were detected in the original Court of Appeals Database in which the unique judge-identifying number was incorrectly coded. For this reason, a check of the dataset was done to assure proper coding. For example, in an extreme case, instances were detected in which judges were deciding cases decades before they were appointed to the bench or even decades after they had died. To correct these issues, anytime a judge appeared to decide a case outside of the years they served on the bench, the individual case was examined using Lexis-Nexis Academic Universe to determine which circuit judges decided the case. Then, the correct judge and his or her characteristics were inserted in the reshaped dataset.

The period for this sample includes cases decided from 1960 to 2001, and examines votes from judicial appointees from President John F. Kennedy to William J. Clinton. This period was selected based on prior research and data limitations. First, prior research suggests that significant ideologically polarized judicial decision making did not occur until the 1960s

(Scherer 2005). While some researchers credit pre-Kennedy presidential administrations for making judicial appointees based on policy goals (Solomon 1984), research suggest that clear voting patterns based on ideology did not occur until more modern times. Presidents began routinely screening appointees below the Supreme Court level for their ideological tendencies beginning in the 1960s in order to predict their future judicial behaviors (Rowland and Carp 1996). Therefore, limiting the data to these periods where even non-Supreme Court appointees became routinely scrutinized appears appropriate in order to determine whether modern presidents are successful in selecting like-minded judges.

A second reason for selecting this time period concerns the control variables used in the study. As other researchers have found (Hettinger, Lindquist, and Martinek 2006), data on judicial characteristics, particularly measures for ideology, are greatly limited for appointees before 1960. Further, other information needed for this analysis, including measures of state ideology, are lacking before 1960. Therefore, for both theoretical and practical reasons, the data are limited to cases that were decided in periods that are more recent.

One possible limitation with using the Court of Appeals Database involves the fact that only published opinions from the circuit courts are coded in the dataset. This limitation excludes many decisions made by circuit judges. Some prior studies have found that non-published opinions, across both the district and circuit court levels, may include important policy consequences (Siegleman and Donohue 1990; Songer 1990; 1988; Vestal 1970-1971). However, those opinions worthy of publication are generally considered decisions that possess greater policy and political impact. In fact, publication guidelines discourage judges from publishing decisions that "do not explain unique factual evaluations and/or legal interpretations" (Rowland and Carp 1996, 20). Therefore, the majority of unpublished decisions should be routine cases

where judges lack the ability to use their discretion to shape public policy. Consequently, as other researchers have stated (Dolbeare 1969), relying on published opinions, while not perfect, does allow generalizations about behaviors as published opinions are representative of the major policy decisions made by judges.

While the judge's vote provides an indication of the judge's policy preferences, many scholars have noted that the circuit court judges are limited in their decision-making because of their mid-level status on the judicial hierarchy. Unlike the U.S. Supreme Court, the Courts of Appeals must generally make a ruling on every case. The vast majority of these decision involve affirming lower-court holdings where the law and the facts are clear (Cohen 2002). Therefore, even if published, judges often lack the ability to use their discretion and seek their policy preferences in these routine cases. As Rowland and Carp suggest

> when judges perceive that they have a great deal of uncensored discretion in deciding a given case, they will be more likely to give vent to their own personal set of attitudes . . . than are jurists whose decision making is bridled by clear-cut legal guidelines monitored by vigilant appeals courts (1996, 41).

While Rowland and Carp's (1996; Carp & Rowland 1983) studies examined district court judges, their expectations about jurist discretion apply to circuit judges as well. Routine cases where the law is settled and where the Supreme Court has specifically spoken on an issue do not present cases where circuit judges may be free to vote based on their policy preferences.

To avoid these routine cases where judges may lack the opportunity to use their discretion, this research conducts analysis on cases with a dissenting opinion and/or a reversal of the trial court's decision, and then separate analyses on all cases included in the database. Dissents have been suggested as an objective indicator of a case in which a judge may be voting their policy preferences without the constraints of conflicting legal norms and precedents (Goldman 1975; Pritchett 1948). Along with dissents, however, reversals of lower court

decisions have also been suggested as indicators of cases where appellate judges have more judicial discretion (Giles, Hettinger, and Peppers 2001; Scherer 2005, 2001; Songer and Ginn 2002; Songer, Sheehan, and Haire 2000). When either of these situations occurs, there is a clear disagreement between at least two political elites about what the proper ruling should be, either between two circuit court judges or between the circuit panel and a federal district court judge. Further, these situations may be closely linked, as studies have shown increased dissent rates on the circuit panel when the panel reverses a lower court decision (Hettinger, Lindquist, and Martinek 2003). Therefore, this analysis will focus primarily on those non-consensus cases, or cases that have a dissenting opinion or overturn a decision from the district court. However, for comparison purposes, analyses will be conducted and models reported that include all cases, which include unanimous opinions and cases where the circuit court merely affirms the lower court opinion as well as the non-consensus cases.

Separate analyses will also be conducted on social issue cases and economic issue cases. Social issue cases involve legal matters such as criminal cases, privacy issues, civil liberties, and civil rights as these issues. Appendix B describes which cases were included in these categories. These issues are presumed to be the most clearly defined in terms of ideology and attitudes (Carmines and Stimson 1989) and so we would expect to find clear ideological differences within these cases if presidents are successful in appointing like-minded appointees. However, some presidents also have very clear economic agendas and may select their judicial appointees based on economic philosophy. For example, Franklin Roosevelt viewed the judiciary as a key obstacle in establishing New Deal economic programs and sought appointees that would support the President's economic policies (Goldman 1997). While possibly known more for appointing judges based on their conservatism on social issues, President Reagan was also viewed as

selecting judges that would support corporate interests (Rowland and Todd 1991). Therefore, analyses will be conducted separately to determine the president's policy influences in both these spheres and to determine the long-term impact of judicial appointments.

V.II. Dependent Variable

The individual judge's vote within a case serves as the dependent variable for this analysis (see Table 5.1 for a complete listing and codification of all variables). The dependent variable is coded as zero "0" if the judge supports a conservative outcome and a one "1" if the judge supports a liberal outcome. This variable stems from the Court of Appeals Data Base (Songer 1997). While the ideological directionality of the judges' votes are, to some extent, at the discretion of the original coders, the Court of Appeals Data Base administrators established several rules and a detailed coding scheme to guide the coder decisions. Most of the cases conformed to general definitions of "conservative" or "liberal" (Songer 1997: 91). For example, a vote supporting a criminal defendant's position would be coded as "liberal," while a vote supporting the conviction would be coded as "conservative." Votes supporting individuals as litigants or supporting other "underdog" litigants (Songer and Sheehan 1992) are generally coded "liberal" while a vote supporting a large corporation or the national government against individuals are generally considered "conservative." The inter-coder agreement in the original data collection on directionality of the judges' votes was 94 percent for the opinion writer, 92.4 percent for the second judge on the panel, and 92 percent for the third judge on the panel (Songer 1997: 91, 166, 169). However, some cases may be unclear as to ideological directionality. These cases where the direction of the vote was unclear were excluded from the analysis to maintain consistency and ease of interpretation. Since the Court of Appeals Database is a sample

of cases, each case used in this project was also weighted to approximate a random sample (see Songer 1997, 8-10).

While some past studies have examined presidential effects using an overall liberal voting percentage as their dependent variable (Kuersten and Songer 2003; Segal, Howard, and Timpone 2000; Songer and Ginn 2002) this study examines the individual judge's vote in each case for two main reasons. First, while examining overall voting records may allow for general trends, it may be difficult to examine the time facets needed to determine a president's long-term policy influence through the nominations. For example, Kuersten and Songer (2000) found a strong relationship between the appointing president's policy preferences and judicial behaviors using the overall percentage of votes supporting a liberal outcome cast by the judge. While these "career stats" do allow an examination of general trends, the authors' approach does not allow for examination at different career periods and thus may over or under estimate the ideological concordance or consistency. For example, an appointee may vote in a highly consistent way with the nominating president's policy preferences in the first few years, but this consistency may decline over the judge's career. If this consistency or concordance is strong enough early on, it could have such an influence on the career voting record that the judge appears to consistently vote in-line with presidential policy preference when, in fact, this occurs only during the early part of their career. Conducting an examination at the individual vote level removes the possibility that a short period of extremely high or extremely low policy concordance will skew our assessments of the judges' behaviors from looking at the career voting record.

Second, examining career voting percentages, even if divided by time as in the Segal, Timpone, and Howard (2000) analysis, negates the ability to include many important controls that may influence judicial behaviors. For example, it is possible that a judge closely follows the

Table 5.1: List of Variables Used in Empirical Analysis

Variable	*Operationalization*	*Predicted Direction*
Direction of Judge's Opinion (Dependent Variable)	1= Liberal Outcome 0= Conservative Outcome	
	Appointment Variables	
Appointing Presidential Preferences (NOMINATE Scores Model)	NOMINATE Scores: -1.0 to 1.0 (higher scores represent more liberal senators)	+
Appointing Presidential Preferences (Social Issue Model)	0 to 100 point scale (higher values represent more liberal presidents on social issues)	+
Appointing Presidential Preferences (Economic Issue Model)	0 to 100 point scale (higher values represent more liberal presidents on economic issues)	+
Same-Party Senator Preference	NOMINATE Scores: -1.0 to 1.0 (higher scores represent more liberal senators) -if there were two senators, the scores were averaged -if there were no same-party home-state senators, a zero was coded	+
Home-State Political Elite Preference	0 to 100 point scale (higher scores represent a more liberal home-state political elite)	+
	Case Contemporary Variables	
Supreme Court Trends	Percentage of social-issue cases decided liberally by the Supreme Court, lagged by one-year	+
Current Presidential Preference	0 to 100 point scale (higher values represent more liberal presidents on social issues)	+
Federal Government Party	1: the federal government argues for a liberal outcome 0: the federal government is not a party in the case -1: the federal government argues for a conservative outcome	+
Proportion of Current Active Democratic Judges in the Circuit	Percentage of active Democratic judges in each circuit during the year the case was decided	+
Circuit Dummy Variables (not shown in models)	0 or 1 for each particular circuit (9^{th} Circuit as the base)	
	Individual Judge Variables	
Race:	1 = "nonwhite" 0 = "white"	+
Gender:	1 = Female 0 = Male	+
Judge's Age	Numerical age of the judge at the time of case decisions	-

presidential preferences when the federal government is a litigant, but otherwise does not support the president's position in other cases. Examining case-specific variables, such as the federal government's position in a case, the influence of the current presidential administration's policy preferences at the time the case was decided, or the contemporary Supreme Court preferences, are impossible if we examine only overall voting records rather than the individual votes themselves. Therefore, using a vote-level approach allows the inclusion of more control variables that may be influencing the relationship between presidential policy preferences and judicial behaviors. Because of these two advantages, this analysis uses the individual votes of the circuit judges as the dependent variable, rather than overall liberal voting percentages of the judges.

V.III. Independent Variables

To fully assess presidential effects on judicial voting, it is important to consider presidential policy preferences as well as many other factors that could influence judicial behaviors. This dissertation examines three measures of presidential policy preferences, including common space scores derived from Poole and Rosenthal's (1997) DW-NOMINATE scores, presidents' social liberalism as assessed by presidential scholars (Segal, Timpone, Howard 2000), and presidents' economic liberalism as assessed by presidential scholars (Segal, Timpone, and Howard 2000). Other independent variables relevant at the time of appointment may also influence judicial behaviors. Factors, including contemporary Supreme Court ideology, the current presidential administration, the litigant's within each particular case, and individual circuit precedent and personnel at the time the case was decided may all be important limits on a president's influence on judicial decision making. Therefore, controls for these factors will also be included in the models. Lastly, controls will be included for the individual

characteristics of each judge since it is possible that their personal traits, such as gender, race and age, are influencing their decisions. Each of the independent variables are explained below.

V.III.I. Appointment Variables

The *main independent variable* of interest is a measure of a president's policy preferences. Initial studies attempted to use a president's partisan identity as a proxy for his preferences. However, as outlined above, using only this broad measure for policy preferences may greatly under or overestimate the effects of a president's influence. To provide a more refined measure of presidential policy preferences, this analysis will first utilize Poole and Rosenthal's (1997) NOMINATE scores for presidential administrations. The presidential NOMINATE scores create a measure of presidential ideology based on the Congressional Quarterly's assessment of the president's position on congressional roll call votes (McCarty and Poole 1995; Poole and Rosenthal 1997). These measurements are created for each year of a presidential administration. NOMINATE scores are comparable across years and across presidential administrations as well as being comparable to similar NOMINATE scores created for each member of Congress. Although created for each year, these presidential NOMINATE scores were found to be highly stable across each presidential administration (McCarty and Poole 1995). This analysis utilized the average NOMINATE scores for the president across the years of their administration. The original DW-NOMINATE scores range from "-1" (completely liberal) to "1" (completely conservative). In order to maintain consistency, since the operationalization of the judge-votes entail positive values being liberal votes, the NOMINATE scores were transformed so that a positive NOMINATE score indicates a president with more liberal policy preferences. Further information concerning NOMINATE scores and their uses may be located at http://voteview.com.

While NOMINATE scores are a more refined measure of presidential preferences than using presidential partisanship alone, these scores do treat all issues in a similar fashion. Therefore, these measures may miss the differences in policy goals between social issues and economic issues among presidential administrations. For this reason, separate models will also be conducted to examine the presidents' influence in social-issue cases and economic-issue cases. For these separate models, unique measures for a president's social ideology and economic ideology must be used. Therefore, separate measures of presidential policy preferences stemming from Segal, Timpone, and Howard's (2000) study of the United States Supreme Court will be utilized. To derive measures of presidential ideology in social and economic issues, the authors surveyed members of Presidency section of the American Political Science Association and asked them, "Using whatever criteria you believe appropriate, please evaluate the following Presidents on their liberalism in economic policy and social policy (0=extremely conservative; 100 = extremely liberal)" (Segal, Timpone, and Howard 2000, 560-561). The authors obtained 61 responses out of 100 requested surveys. The means of these responses were then used as indicators of presidential policy preferences, which were then examined in conjunction with Supreme Court appointees' voting behaviors. The presidential social liberalism values range from President Lyndon Johnson's 83.5 to President Ronald Reagan's 18.0. The economic liberalism values ranged from President Franklin Roosevelt's 82.5 to President Reagan's 17.6. The standard errors among the values were generally small (none higher than 2.07) (Segal, Timpone, and Howard 2000, 562). Tables 5.2, 5.3, and 5.4 display these presidential scores. If presidents are successful in selecting like-minded judges, we would expect that these measures would have a positive effect. Thus, the higher the presidential

NOMINATE scores and the social and economic liberalism scores, the more likely that president's appointees will support liberal outcomes.

However, the president is also constrained by several institutional factors. For example, the preferences of the home state same-party senators may influence the selection process and the influence of particular president's policy agenda (Giles, Hettinger, and Peppers 2001; Songer and Ginn 2002). Given the preference to fill circuit court positions based on maintaining judges from each state within the circuit (Hettinger, Lindquist, and Martinek 2006) and the power of senatorial courtesy (Goldman 1967), the preferences of the senators in which the opening arose may be influential. To control for the influence of home-state senators, the NOMINATE scores of the home-state senators at the time of the appointment are included for senators of the same political party as the appointing president. The model includes the average NOMINATE score if there were two home state senators of the same party as the president. It is expected that these senate ratings should have a positive effect in judicial votes, or that the more liberal the home-state senator, the more likely the judge will vote liberally in case outcomes. This is a similar measure that has been used in prior studies (Giles, Hettinger, and Peppers 2001).

Another important control variable that arises at the time of appointment may be the ideology of the appointees' home state (Songer and Ginn 2002). Presidents may seek the counsel of the home-state political elite, even those outside the U.S. Senate, when selecting appointees (Rowland and Carp 1996). Further, the pool of candidates for a circuit court position may come from a state's political elite. Therefore, that state's unique political and social culture may be a contributing factor in a particular judge's behavior. To account for a state-political elite's influence and cultural background factors that may influence individual judges, Berry *et al* (1998) have operationalized variables for the state political elite ideology. These variables,

measured at the time of the appointment, control for individual state factors, such as the candidate pool and the influence of the state's political elite. These scores have also been utilized in prior studies to control for local and regional influences on nominations to the circuit courts (Giles, Hettinger, and Peppers 2001; Songer and Ginn 2002). These variables should be positive, in that those appointees selected from states that are more liberal should be more likely to vote liberally in cases.

V.III.II. Case-contemporary Variables

A second category of variables involves factors important at the time of the decision. For example, contemporary Supreme Court ideology is a clear influence on circuit court. Even if presidents are successful in selecting like-minded judges and the Senate confirms those judges, the binding nature of contemporary Supreme Court decisions may be a constraint on lower court decisions (Reddick and Benesh 2000). Research suggests that the lower courts are highly responsive to specific Supreme Court rulings (e.g., Songer and Haire 1992; Songer, Segal, and Cameron 1994). While some suggest circuit court judges may rarely consider reversals (Benesh 2002; Klein 2002), having an opinion overturned by a higher court may impact the judge's career, such as decreasing the chances of promotion (Caminker 1994) or result in a loss of respect for that court (Klein and Hume 2003). Since the High Court has the final authority to restrict lower-court judicial preferences, trends from the Supreme Court need to be accounted for as a possible limitation on the president's ability to shape policy through circuit courts appointments. To operationalize this control, the model includes percentages for the number of social cases decided "liberally" per year, using the U.S. Supreme Court Judicial Database (Spaeth 1998), and lagged by one year. If the Supreme Court is deciding cases more liberally,

circuit judges should be more likely to follow the High Court's lead through recent precedents and decide cases more liberally.

Another governmental control involves the current presidential administration. Circuit court judges may feel pressured to defer to the current president in cases, especially in areas where presidents have historically been granted wider policy-shaping latitude, such as foreign policy (Wildavsky 1966). If the sitting president is a "cue-giver" to the courts, then the current administration could provide information to sitting judges that could influence case outcomes. Similarly, while Supreme Court justices have little incentives to achieve higher office, circuit court judges may tailor their decisions based on their aspirations for promotion to the High Court (Baum 1997). For this reason, the same presidential measures used for the appointing president will also be included for the president in office at the time of the decision.

Similarly, the courts may generally accede to government authority when they are litigants before the court out of deference or due to the governments' greater resources as a litigant (Galanter 1974). The federal government, as the ultimate repeat player, possesses more resources to devote to litigation and is generally more successful in litigation (Kearney & Sheehan 1992; Kritzer 1998; Haire, Lindquist, and Hartley 1999; Songer, Sheehan, and Haire 1999). Therefore, whether it is due to political deference or the advantages of resources, the presence of the federal government as a party may influence circuit court decision-making. A variable is included for when the federal government is a litigant and argues for a liberal position or when it argues for the conservative position. Again, this variable is predicted to be positive in that the circuit court judges are more likely to rule for the liberal position if the federal government takes that position.

Individual aspects of the particular circuit may also be influential in decision-making. Whether this is due to the mentoring process that may go on in circuit courts (Wasby 1989), regional distinctions in culture and ideology (Songer, and Davis 1990), or the partisan composition of the circuits (Velona 2006), there may be distinctions within the circuits themselves that influence individual judges' behaviors. For this reason, two separate controls are also included for the circuits. As a measure of the overall "liberalism" or "conservatism" of a particular circuit, a control is included for the proportion of sitting Democratic judges in a particular circuit for the year the case was decided. If their colleagues within the circuits influence judges, then this variable should be positive, in that judges from more liberal circuits overall should be more likely to support liberal outcomes in particular cases. However, this broad measure alone may not capture all of the variance among the circuits. For this reason, the model also includes dummy variables for the circuits to control for other differences among the circuits. Although these dummy variables are included, they are not shown in the models to conserve space in the dissertation.

V.III.III. Individual Judge Characteristics

Also important in determining presidential affects may be the individual characteristics of the judges. For example, a minority judge's past experience with discrimination or other background factors may lead minority judges to view their roles differently or analyze cases differently than non-minority judges. Some prior studies have found differences in judicial outcomes based on the race of the judge (Welch, Combs, and Gruhl 1988; Smith 1983; Gottschall 1983; Uhlman 1978) but evidence on these differences is mixed with some studies finding no differences (Walker and Barrow 1985; Segal 2000). For example, Scherer's (2005) examination of circuit court decisions making found differences between President Clinton's

African-American appointees' voting behaviors as compared to those of Clinton's Caucasian appointees, but the author found no difference between the voting behaviors of President Carter's appointees of different races. Other studies suggest men and women may decide cases differently (Songer, Davis, and Haire (1994); Allen and Wall 1993; Gruhl, Spohn, and Welch 1981).

Therefore, the model also accounts for variation in the judges behaviors based on individual characteristics. I coded each judge as zero "0" if they are Caucasian and one "1" if they are of another ethnicity. This independent variable would control for the possibility that minority judges may decide cases more liberally than non-minority judges, regardless of the appointing president. Similarly, I controlled for a judge's gender by coding female judges as one "1" and male judges as zero "0." In addition, the age of the judge at the time of case is included in the model, since age may be a factor in the judges' policy preferences in certain case types (Exter and Barber 1986; Kulik, Perry, and Pepper 2003; Manning, Carroll, and Carp 2004; but see Danigelis and Cutler 1991). The model also clusters the data on the individual judge to control for individual factors not included in these controls and as a measure of control for sampling differences in the number of votes included in the sample.

V.III.IV. Presidential Influence's Decay Over Time

Aside from just determining if presidents may influence case outcomes through appointments, this article also attempts to find if that influence is consistent over the judge's career. According to prior theory and as was found in the Supreme Court (Segal, Timpone, and Howard, 2000), the length of time between the judge's appointment and the decision date of the case may be very important. To assess the changes in the relationship between presidential policy preferences and judicial behaviors, this chapter includes models that divide the cases into different periods based on the number of years since the judge's appointment. In order to

provide a greater understanding of judicial voting over time, I conducted analyses examining judges' behaviors using a ten-year cut point and also by dividing the data into multiple periods of the judges' careers. I selected a ten-year cut point since ten years was both the mean and the median experience level of the judge per observation. To further examine the influence of voting over the judges' careers, I estimated models after dividing the data into four separate periods of a judge's career: the first five years, years six to ten, years eleven to fifteen, and finally all votes after a judge has served sixteen or more years. These models follow a similar tactic used by Segal, Timpone, and Howard (2000) in their examination of presidential policy concordance and judicial behaviors in the United State Supreme Court, with several modifications. While building on similar time-frame theories, this research differs greatly in that the previous authors used an aggregate measure of all Supreme Court appointees' votes on the Supreme Court and this study analyzes each vote individually. Using this career-period framework and examining behaviors at the case-vote level also makes this model unique from other research that looks at presidential ideology and the overall career percentages of liberal votes at the courts of appeals (Kuersten and Songer 2003).

Further, only those judges that have served for ten years or more are included in the logistic regression models. This was important for several reasons. First, since we are trying to examine a president's long-term influence on policy through court appointments, we want to examine only those judges that serve for many years. While it is a small number, it is possible that those judges that serve only a few years could skew the results and distort the president's long-term ability to influence policy through judicial nominations. This practice has been followed by other studies that examine long-term judicial behaviors, such as Epstein et al (1998) examination of Supreme Court justices' changing preferences over time. Second, since the goal

is to examine the judges' behaviors over different career periods, limiting the observations to those judges that serve at least ten years on the bench increases the consistency of the judge-groups across the different career-period models. Third, I selected the ten-year point since it was both the mean and median number of years of service per observation in the data. While including only those judges that served at least ten years did not assure that the exact same judges were used within each career-period model, it does increase the consistency and ensures that judges will be present in both periods in the ten-year cut point analysis and multiple periods in the analysis examining multiple career periods.

V.IV. Assessing Judicial Behaviors and Presidential Preferences

Tables 5.2, 5.3, and 5.4 display the NOMINATE and liberalism scores for each president and the percentage of liberal votes cast by each presidential cohort in the samples. The third column in each table indicates the overall percentage of liberal votes for the sample including all periods of an appointee's career. The numbers in parentheses represent the ordered rankings from highest percentage of liberal votes to the lowest. The last four columns of each table represent the percentage of liberal votes for each cohort divided by the time served on the bench. Again, the number in parentheses in each cell represents the ordered rankings from highest percentage of liberal votes to lowest. For example, the first number in column four of Table 5.2 tells us that during their first five years of their careers, President Clinton's appointees voted liberally in 63.7 percent of the cases where there was a dissent or a reversal of the district court's decision. The number "3" in parentheses indicates that the Clinton cohort had the third highest liberal percentage within this column.

Table 5.2: Presidential NOMINATE Scores and Liberal Voting Percentages of Presidential Cohorts (Non-consensus Cases)

President	NOMINATE Score	Percentage of Liberal Votes (ranking)	Percentage of Liberal Votes, First Five Years (ranking)	Percentage of Liberal Votes, Years Six to Ten (ranking)	Percentage of Liberal Votes, Years 11 to 15 (ranking)	Percentage of Liberal Votes, 16 years or more (ranking)
Clinton	.819	63.76 (3)	62.32 (4)	67.44 (1)	--	--
Carter	.732	61.76 (4)	65.67 (3)	60.52 (4)	59.80 (3)	58.90 (3)
Johnson	.542	65.45 (2)	67.25 (2)	66.67 (2)	60.21 (2)	66.67 (1)
Kennedy	.527	65.56 (1)	68.03 (1)	66.34 (3)	61.45 (1)	64.45 (2)
Ford	-.531	49.15 (7)	52.03 (6)	55.96 (5)	45.78 (6)	40.82 (6)
G.H.W. Bush	-.613	39.38 (8)	40.68 (8)	37.84 (8)	37.93 (7)	--
Nixon	-.629	52.84 (5)	55.67 (5)	46.12 (6)	51.38 (4)	44.96 (5)
Reagan	-.676	48.25 (6)	45.92 (7)	48.89 (7)	49.18 (5)	58.21 (4)
N		9207	2728	2904	2178	1397

Table 5.2 displays the percentage of liberal votes by presidential cohorts for all non-consensus cases. The Presidents in the first column are ranked by their NOMINATE scores, which are provided in the second column. Column three indicates the percentage of time each presidential cohort voted liberally over all non-consensus cases. While we would expect President Clinton's cohort to have the highest liberal voting percentage given Clinton's NOMINATE score, we see that the Clinton cohort was the third highest, behind the cohorts of Presidents Kennedy and Johnson, respectively. Similarly, the cohorts for President Nixon and Reagan were slightly more liberal than those of Presidents Ford and G.W.H. Bush, even though Nixon and Reagan possess more conservative NOMINATE scores. However, even despite these

inconsistencies, the partisan distinctions remain clear, with the four Democratic presidential cohorts voting more liberally than Republican presidential cohorts.

Columns four through seven in Table 5.2 display the percentage of liberal votes divided by the career period of the judges. For example, column four only includes those votes from judges during the first five years of their tenure on the circuit court, while column seven included only those votes from judges after they have served at least sixteen years on the bench. Looking across the columns divided by judicial career periods, we see the same general partisan trends, although the results do not appear as expected with respect to the NOMINATE scores. The Democratically-appointed cohorts generally favor liberal outcomes more often than do the Republican-appointed judges, although the exact ranking of the cohort liberalism varies over the columns. The voting percentages appear to follow partisan lines and follow the NOMINATE scores generally, but we do not see a consistent pattern of judges following their appointing president's preferences.

Table 5.3 is very similar to the previous table. Here we are examining the percentage of time presidential cohorts support liberal outcomes in social issue cases only. The presidents in column 1 are ranked in order of their social liberalism scores (Segal, Howard, Timpone 2000), which are provided in the second column. Again, we see that the percentages in column three appear somewhat as expected, although the cohort rankings do not exactly follow the rankings based on the presidents' social liberalism scores. Throughout the table, Democratically-appointed cohorts appear more supportive of liberal outcomes in social issue cases than do the Republican-appointed cohorts. However, there do appear to be some inconsistencies from what one would expect by looking at the presidential preference scores. As displayed in column three, President Johnson has the highest social liberalism score, but his circuit court appointees appear

Table 5.3: Presidential Social Liberalism Scores and Liberal Voting Percentages of Presidential Cohorts in Social Issue Cases (Non-consensus Cases)

President	Social Liberalism Score	Percentage of Liberal Votes (ranking)	Percentage of Liberal Votes, First Five Years (ranking)	Percentage of Liberal Votes, Years Six to Ten (ranking)	Percentage of Liberal Votes, Years Eleven to Twelve (ranking)	Percentage of Liberal Votes, 16 years or more (ranking)
Johnson	83.5	72.64 (2)	77.44 (2)	73.95 (1)	63.81 (3)	74.07 (1)
Clinton	72	63.35 (4)	62.28 (4)	64.71 (4)	--	--
Carter	67.0	66.70 (3)	72.20 (3)	66.67 (3)	65.42 (2)	56.80 (4)
Kennedy	66.4	75.20 (1)	81.90 (1)	71.93 (2)	73.17 (1)	71.43 (2)
Nixon	44.9	53.37 (5)	58.61 (5)	57.92 (5)	46.67 (6)	40.65 (6)
Ford	39.3	49.78 (7)	52.86 (6)	53.57 (6)	48.94 (4)	42.86 (5)
G.H.W. Bush	32.8	42.00 (8)	44.77 (8)	39.10 (8)	35.71 (7)	--
Reagan	18	51.45 (6)	50.64 (7)	53.14 (7)	48.70 (5)	59.46 (3)
N		4762	1373	1518	1134	737

less supportive of liberal outcomes than the cohort of President Kennedy, who earned the fourth highest social liberalism score. President Clinton's appointees voted slightly more conservative comparatively to the other Democratic cohorts, even though President Clinton had the second highest social liberalism score. The cohort of Clinton appointees voted more conservatively than either President Carter or Presidents Kennedy's cohorts. On the opposite ideological spectrum, President Reagan's appointees voted slightly more liberal than would be predicted by the social liberalism scores, with President Ford and President G.H.W. Bush's cohorts voting more conservatively overall than the Reagan appointees.

Column seven of Table 5.3 appears to diverge from our expectations. This column includes only votes by judges after they have served sixteen years or more on the bench. Here, President Reagan's appointees supported liberal outcomes in social cases more often than President Carter's appointees, despite the fact that Reagan had the lowest social liberalism score and Carter had the third highest social liberalism score. Given that the data stem through 2001, the smaller number of votes for Reagan appointees may explain part of the unusual results for the Reagan cohort in this period. Further, as there is a norm of consensus in the three-judge panels (Hettinger, Lindquist, and Martinek 2006), these results could display the moderating or even liberalizing influence that newly appointed Clinton judges may have had on the otherwise conservative Reagan appointees. However, even with the smaller number of votes in this period for the Reagan appointees, the results are still striking for the Reagan cohort, given the concerns of the Reagan Administration for picking conservative judges (Goldman 1997). Except for the Reagan cohort, the other presidential cohorts in column seven appear largely as expected and fall into partisan lines, although the precise ranking of the liberal voting percentages is not exactly as would be predicted from the ranking of presidential social liberalism scores.

Table 5.4 follows the same basic analysis except the presidents in column one are ranked based on their economic liberalism scores and the cells in columns three through seven examine liberal voting percentages for only cases involving economic issues. The rankings in each column largely follow partisan lines, although they again do not neatly follow the presidential liberalism score rankings. Column six provides perhaps the most interesting comparisons. This column examines those votes cast by judges after they have served between eleven and fifteen years on the bench. Here, we see that President Nixon's cohort supported liberal outcomes in economic cases more often than any other presidential cohort. This is surprising given Nixon's

Table 5.4: Presidential Economic Liberalism Scores and Liberal Voting Percentages of Presidential Cohorts in Economic Issue Cases (Non-consensus Cases)

President	Economic Liberalism Score	Percentage of Liberal Votes (ranking)	Percentage of Liberal Votes, First Five Years (ranking)	Percentage of Liberal Votes, Years Six to Ten (ranking)	Percentage of Liberal Votes, Years Eleven to Fifteen (ranking)	Percentage of Liberal Votes, Sixteen years or more (ranking)
Johnson	78.2	57.78 (2)	57.38 (4)	59.00 (3)	54.91 (2)	59.44 (2)
Kennedy	65.4	65.25 (1)	58.62 (2)	62.96 (2)	49.40 (4)	58.33 (3)
Clinton	63.1	57.48 (3)	63.30 (1)	69.70 (1)	--	--
Carter	60.3	55.65 (4)	58.58 (3)	54.58 (5)	50.25 (3)	61.80 (1)
Nixon	47.7	51.68 (5)	51.22 (6)	50.61 (6)	55.44 (1)	48.67 (5)
Ford	38.8	47.73 (6)	52.00 (5)	57.14 (4)	40.00 (6t)	38.09 (6)
G.H.W. Bush	33.1	36.57 (8)	37.17 (8)	35.23 (8)	40.00 (6t)	--
Reagan	17.6	44.40 (7)	42.11 (7)	43.03 (7)	48.68 (5)	55.17 (4)
N		4244	1296	1311	1001	636

partisanship and the fact that he had only the fifth highest economic liberalism score. Other than the Nixon cohort in column six, the rankings generally follow partisan lines, although again the cohort rankings do not mirror the presidential liberalism rankings.

From Tables 5.2 through 5.4, we are able to see some trends from these descriptive statistics. Presidential partisanship appears a strong factor, with Democratic presidential cohorts generally appearing more likely to support liberal outcomes in cases than the Republican presidential cohorts. However, the results appear mixed concerning individual presidential preferences. We would expect that those presidents with more liberal preferences, whether measured by NOMINATE scores or the Segal, Timpone, Howard (2000) liberalism scores,

would appoint judges that support liberal outcomes in cases more often than presidents with more conservative preferences. However, our rankings in columns three through seven of the tables are inconsistent with the preferences rankings in column two of the tables, leaving us with somewhat mixed results.

While examining these trends may be helpful, a more rigorous analysis is required to understand the relationship between an appointing president's preferences and appointee behaviors. With the dichotomous dependent variable for the judge's vote in each case, models utilizing logistic regression (Liao, 1994) were estimated to further understand this relationship and examine alternative hypotheses. Separate analyses were conducted using all a judge's votes and by dividing the observations by periods in the individual judges' careers. While the descriptive analysis above examined the overall liberal voting percentage of the entire presidential cohort, our dependent variable in the logistic regression models will be the individual judge's vote. Unlike the descriptive analysis above or examining overall voting records as some past studies have done (Segal, Timpone, Howard 2000; Songer and Ginn 2002), using the individual vote as the dependent variable allows more controls to be incorporated in the models, including variables relevant to the individual cases. This will allow for a more in-depth analysis of the possible relationship between presidential preferences and judicial behaviors by being able to control from more influencing factors.

Each observation is weighted to represent a random sample and observations are clustered on the individual judge. For the initial analyses, I estimated models that included only non-consensual cases, that is cases with either a dissent or a reversal from the district court. These models should represent cases where an appointee is able to use their discretion and thus potentially vote on the basis of their preferences. For comparison purposes, models are also

conducted using all cases, consensus and non-consensus. As noted above, our main independent variable of interest is the measure of presidential policy preferences. Separate models were conducted using each of the three presidential policy preference measures outlined above. Models using the NOMINATE scores, which are derived from the position taken by the president on congressional legislation (Poole and Rosenthal 1997) examine all types of legal issues. Models using the presidents' social liberalism, as assessed by presidential scholars (Segal, Timpone, Howard 2000), will only examine cases involving social issues. Finally, models utilizing the presidents' economic liberalism, as assessed by presidential scholars (Segal, Timpone, and Howard 2000), will only examine those votes from cases involving economic issues.

V.V. Logistic Regression Results: All Career Periods[17]

Table 5.5.a displays the logistic results for three separate models. The variables are listed in the first column, including our three different measures of presidential policy preferences. Only one of these presidential policy preference variables is used in each model. The presidential NOMINATE scores are used in the "All Issue Cases" model in the second column. The social liberalism score is used in the "Social Issue Cases" model displayed in column three. Lastly, the presidential economic liberalism score is used in the "Economic Issue Cases"

[17] Correlation matrices and the variance inflation factors were examined to detect collinearity among the independent variables. The VIF reflects the degree to which the sampling variance of the predicted values are increased as a consequence of the correlations among the regressors and is an indicator of the harm done by high multi-collinearity (Fox and Monette, 1992). While some scholars report that a VIF of 10.0 is allowed (Gujarati, 2003) more conservative evaluations suggest 3.0 as an appropriate guideline (Fox, 1991). For this set of variables, the correlations between current president and appointing president was high in zero-to-five years period in the multiple career period models. This was expected since often these were the same president. For this reason, the current president variable was dropped from the first time frame in the multiple career period models. The only other area of possible concern was between the appointing president's liberalism scores and the same-state senator's NOMINATE scores. For some of the models the correlation between these two variables was somewhat high (although none above .7000) and the V.I.F. values were above 3.0 (although none above 3.5).

Table 5.5.a: Presidential Preferences and Judicial Voting, Logistic Regression Analysis of Non-consensus Cases, 1960-2001, Judges Serving 10 years or more

Variable	*All Issues Cases*	*Social Issue Cases*	*Economic Issue Cases*
Appointment Variables	***Coefficient (Robust Std. Errors)***	***Coefficient (Robust Std. Errors)***	***Coefficient (Robust Std. Errors)***
Appointing President's NOMINATE Score	.3547*** (.070)	--.	--
Appointing President's Social Liberalism Score	--	0112*** (.003)	--
Appointing President's Economic Liberalism Score	--	--	.0052* (.002)
Same Party Senate Preference	.3169* (.155)	.2266 (.244)	.5376** (.189)
Home-State Political Elite	-.0006 (.002)	.0050* (.003)	-.0044* (002)
Case-Contemporary Variables			
Supreme Court Liberalism Trend	.0069* (.004)	.0120** (.005)	.0058 (004)
Current President Liberalism	-.0850* (.041)	-.0025 (.002)	-.0025 (.002)
Federal Government's Position	-.4759*** (.039)	-.4043*** (.064)	-.4251*** (.054)
Circuit Percentage Democratic	.9773*** (.234)	.6843* (.336)	1.308*** (.288)
Individual Judge Characteristics			
Race	-.0978 (.183)	.1014 (.231)	-.1263 (.186)
Gender	.0200 (202)	.1452 (.204)	.1152 (.255)
Age During the Case	.0005 (.004)	-.0044 (.005)	.0034 (.005)
Constant	-.4967 (.349)	-.8503 (.483)	-.9427* (.462)
N	8509	4291	3870
Number of Judges	263	259	257
Prob > chi(2)	0.000	0.000	0.000
Pseudo R-square	0.045	0.045	0.040
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)			

displayed in the last column on Table 5.5.a. This table provides an analysis of the relationship between presidential policy preferences and judicial behaviors throughout the entire career of the appointee.

Examining the second column of Table 5.5.a, we see that the NOMINATE score for the appointing president is positive and statistically significant, as expected. This indicates that the more liberal the president's policy preferences, the more likely the president's appointee will support a liberal outcome. The president's influence appears strong, even after controlling for several other factors in the model. As for the other appointment variables, senatorial courtesy also appears influential, as the "same party senate preference" variable is statistically significant and positive. This indicates that the more liberal the senator of the same party as the president and from the state where the circuit opening occurs, the more likely the judge will support a liberal outcome. Several case contemporary variables also appear influential. For example, the effect of the variable accounting for the Supreme Court's liberalism, measured by the number of cases decided liberally in the year previous to the circuit judge's vote, is positive and statistically significant, indicating that circuit judges may follow Supreme Court trends. Likewise, the circuit personnel as a whole appears to play a role in judicial decisions. As the number of active Democratic judges on a circuit increases, the likelihood that an individual judge will support liberal outcomes also increases. The variables for the current presidential preference and the federal government's position in the case were statistically significant, but in the opposite direction. While we would expect the federal government to have a positive effect in a judge's vote, the negative coefficient can be explained in part by the use of only non-consensus cases. In the sample, a large number of cases in the non-consensus sample include the circuit court overruling a district court decision that supports the government. In models using all of the cases

in the database including unanimous decisions and affirmations of the lower court, the position of the United States performed as expected, positive and statistically significant, as indicated below. Thus, because we are looking at only non-consensus cases where judges have the most discretion, it would appear that judges are not swayed by the stronger government litigants, but in fact support the party opposing the federal government in these non-routine cases.

The negative direction of the current presidential preference variable suggests that judges do not take cues from the current administration, but in fact, generally oppose the positions of the current administration. Neither the race, the gender, nor the age of the judge at the time the case was decided appears an influential factor in their judicial behaviors, as displayed by the "individual judge characteristic" variables. These non-findings appear similar to conclusions reached in some prior studies concerning individual characteristics as influential factors on judicial decisions (e.g. Segal 2000; Walker and Barrow 1985).

Similar results occur in column three of Table 5.5.a. This model examines only those cases with social issues and uses the presidential social liberalism scores. Column three of Table 5.5.a provides support for the position that the appointing presidents can influence future decisions through their nominations, as appointees appear to vote congruently with the appointing president's policy preferences in cases involving social issues. The presidential policy preference variable is statistically significant and positive, indicating that the more liberal a president's preferences on social issues, the more likely that president's judicial appointees will vote to support liberal outcomes in cases involving social issues. As for the other appointment-level variables, senatorial courtesy appears to have no effect, although the home-state political elite measure does appear to have some influence, as it is positive and statistically significant.

As with the "All Issue Cases" model in column two, several case-contemporary variables appear significant in the "Social Issues Model" in column three. The Supreme Court trend, here the percentage of cases involving social issues decided liberally by the Supreme Court one year prior to the circuit court decision, is positive and statistically significant, indicated the possibility that circuit judges may follow Supreme Court trends in social issues. The current presidential preference variable is negative and statistically significant, again indicating the judges do not appear to take their cues from the current president. The federal government's involvement in the case is negative and statistically significant, again possibly due to the inclusion of only non-consensus cases. The partisan make-up of the other circuit personnel also appears influential. Here, as in the first model, as the percentage of active Democratic judges increases on the court, the likelihood that each judge will support a liberal outcome also increases. The variables measuring individual judge characteristics proved inconsistent predictors. The race, gender, and age of the judge failed to achieve statistical significance in the social issue model.

The final column in Table 5.5.a displays the results from a logistic regression analysis utilizing the presidential economic liberalism scores. The data in this model are limited to only those cases involving economic issues. Here again, we see that presidents appear successful in selecting judges that would vote congruently with the president's economic policy preferences. Our measure for presidential economic preferences is statistically significant and positive in the "Economic Issue Cases" model, indicating that the more liberal the appointing president's economic preferences, the more likely his judicial appointees will support liberal outcomes in cases involving economic issues. Again, this congruence or concordance appears to exist even after controlling for several other influential factors.

As for the other variables relevant at the time of appointment, senatorial courtesy appears to play a role in future judicial behaviors, as again the more liberal the home state senator of the president's party at the time of the appointment, the more likely the judicial appointee will support liberal outcomes in future cases. The ideology of the home-state political elites was also significant, but in the opposite direction than predicted.

Several of the case-contemporary variables in the "Economic Issue Model" in column four of Table 5.5.a also appear influential. Once again, circuit court personnel appear influential. As the number of Democratic judge's increase, again the likelihood of an individual judge supporting a liberal outcome increases. The federal government position variable is negative, again possibly not an unusual result given the data is limited to non-consensus cases. As with the other models, the individual characteristics of the judges, themselves, do not appear influential in the judicial behaviors in cases involving economic issues.

Since the coefficients in logistic regression are not interpretable as in ordinary least squares models, the predicted probabilities may be used to put the presidential preference variable into perspective. Predicted probabilities allow us to calculate the likelihood of a positive outcome while holding certain variables at designated values (Long and Freese 2003). For our purposes, the predicted probabilities allow us to calculate the likelihood of a liberal vote for each presidential cohort while controlling for all other variables. Table 5.5.b displays the predicted probability for each president's judicial appointee cohorts for each of the models displayed in Table 5.5.a, while holding all other variables at their means. For example, column two of Table 5.5.b shows that a Clinton appointee is expected to vote liberally in 64.25% of all non-consensus cases, holding all other variables constant. This value for the Clinton appointees is 12 points higher than the likelihood of a liberal vote from an appointee of the previous

Table 5.5.b: Predicted Probability of a Liberal Vote (Holding All Other Variables At Their Means)

President	All Non-Consensus Cases, All Career Periods	Non-Consensus Social Issue Cases, All Career Periods	Non-Consensus Economic Cases, All Career Periods
Kennedy	61.84*	65.36*	54.45*
Johnson	61.97*	69.55*	56.09*
Nixon	51.82*	59.73*	52.18*
Ford	52.68*	58.21	51.03*
Carter	63.54*	65.51*	53.8*
Reagan	51.40*	52.32*	48.29*
G.H.W. Bush	51.96*	56.43*	50.03*
Clinton	64.25*	66.76*	54.16*
Mean	57.43	61.73	52.50
Standard Deviation	5.91	5.94	2.60

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

administration, George H.W. Bush, whose appointees are likely to support liberal outcomes in about 52 percent of the cases, again holding all other variables at their means. Comparing President Reagan, who had the lowest Nominate Score, to President Clinton, who had the highest Nominate Score, we see that a Clinton appointee is nearly thirteen-percentage points more likely to support a liberal outcome than a Reagan appointee, holding all other variables at their means. In relation to a Reagan appointee, this represents a relative increase of nearly twenty-five percent. Overall, Table 5.5.b column two suggests that appointees from Democratic presidents are at least ten percentage points more likely to support liberal outcomes than their peers who were appointed by Republican presidents. While a ten to thirteen percentage difference may seem small, these percentages may represent hundreds of votes across the nation, collectively, and could influence close cases in many circuits.

Column three of Table 5.5.b displays the predicted probabilities for a liberal vote based on the social issue model in Table 5.5.a. Here, the same general trends occur, although the discrepancies between presidential appointment cohorts are more pronounced. For example, concerning cases with social issues, a Johnson appointee is over seventeen-percentage points more likely to support a liberal outcome than a Reagan appointee, holding all other variables at their means. This represents a relative increase of nearly thirty-three percent between the president with the highest social liberalism score (Johnson) and the president with the lowest social liberalism score (Reagan). Partisan distinctions are again apparent, as all Democratic presidential cohorts were all more than sixty-percent likely to support liberal outcomes, while all Republican appointed cohorts were under sixty percent.

The final column in Table 5.5.b displays the predicted probabilities for the economic model in Table 5.5.a. Although there was a large variance between the presidential economic liberalism scores presented in 5.4, the predicted probabilities presented in the forth column of Table 5.5.b do not vary greatly. The difference between the president with the highest economic liberalism score (Johnson) and the lowest economic liberalism score (Reagan) was nearly eight percentage points. Thus, holding all other variables at their means, a Johnson appointee is eight percent more likely to support a liberal outcome in an economic case than a Reagan appointee, even though their presidential liberalism scores differ by over sixty points. The lack of substantial differences between these predicted probabilities may suggest that economic issues often change rapidly over time and do not neatly fall under an ideological spectrum, as do cases dealing with social issues.

Through each of the models presented in Table 5.5.a, policy concordance appears to occur, as appointees from more liberal presidents are generally more likely to select liberal

outcomes in court cases. This occurs regardless of which presidential preference variable is used and regardless of whether the case involves economic or social issues, although the distinctions between presidential appointees do not appear as strong in economic cases based on the predicted probabilities. This concordance occurs even after controlling for several other factors that could also be influencing judicial behavior. Therefore, it appears that the choices presidents make in their judicial appointees are generally important in future case outcomes.

However, while this initial analysis provides some evidence that policy concordance exists between the president and the judicial appointees, these models cannot answer the question of whether this policy concordance continues throughout the career of the appointee. If the concordance does remain, then presidents indeed have the opportunity to influence public policy for many years after they leave office. However, if this policy concordance fades over time, then presidential policy influence through the judicial appointees may in fact be short lived. To answer this question, a separate analysis must be conducted.

V.VI. Logistic Regression Model: Ten-Year Cut Points

While the models in Table 5.5.a (using all career periods) suggest that presidents are generally successful in selecting like-minded judges, still open is the question of whether the influence of presidential policy preference is conditional over time. A closer look at the time since the appointment provides a more in-depth analysis of whether this policy concordance remains stable throughout the judge's career. To examine the long-term policy impact that judicial appointments may have, separate analyses were conducted dividing the data into votes cast by the judges during the first ten years of their career and votes cast after ten years on the bench. Models similar to those used in Table 5.5.a were conducted using the ten-year cut point to separate the data.

To increase the consistency across the samples, again only those appointees that served ten years or more years were included. This ensures that all judges at least had the possibility of casting votes within each career period. This also assures that those judges that serve relatively short terms and thus do not represent a president's long-term ability to influence judicially created public policy do not strongly influence the results.

Table 5.6 shows the logistic regression results for a model that includes all issue types and uses the presidential NOMINATE scores as a measure of presidential policy preferences. The model in column two includes only observations of votes cast by judges during their first nine years on the court, while column three includes votes cast after a judge has served ten years or more on the courts of appeals. Other than the ten-year cut point, these two models in Table 5.6 are identical. The ten-year point represents a time when the appointing president is clearly out of office and because ten years was both the median and the mean years of service for the judge per observation in the sample.

Comparing the two models, we see that policy concordance exists between presidential policy preferences and circuit court appointees' behaviors across time. The presidential preference variable is positive and statistically significant in both column two and three. This indicates that the more liberal the appointing president is, the more likely their circuit court appointees will support liberal outcomes in non-consensus cases, even after controlling for many other factors. This concordance appears to remain regardless of whether the judge is in his first ten years on the bench or if they have served for a longer term. Therefore, it would appear that presidents do have the ability, at least indirectly, to influence future appellate decisions through the appointments they make.

As for the other variables in Table 5.6, only two variables appear influential across both models. The federal government's position is statistically significant, although not in the predicted direction. Again, this finding, while seemingly unusual, is likely due in part to the sampling and the limiting of the cases to non-consensus decision. Further, the circuit's percentage of Democratic active judges appears significant across both models. This indicates that circuit personnel may be influencing the decision making of individual judges. This adds a further significance to the president's ability to influence the partisan make-up of the circuits, as outlined in Chapter IV. The other control variables do not appear consistent across time in Table 5.6.

Similar to Table 5.6, Table 5.7 displays the logistic regression results for two separate models that include only social issue case and that differ only by the judge's time since their appointment. Again, we see in column two and three of Table 5.7 that our measure of presidential policy preference, here the Segal, Timpone, and Howard (2000) social liberalism score, is positive and statistically significant. This indicates that for cases involving social issues, the more liberal the appointing president the more likely their circuit court appointees will support liberal outcomes in non-consensus cases. Again, this policy preference concordance appears to be maintained over time, as the variable has a positive influence on decisions whether the judge is in the first decade of their careers or in the later years.

Once again, few of the variables appear to have a significant influence over both models. Only the variable for the federal government's position is statistically significant, although it is again exerting a negative effect. While two other variables, the Supreme Court's trend in social issue cases and our measure of senatorial courtesy, appear to influence judicial decisions at certain times, neither of these variables is statistically significant across the judge's career.

Table 5.6: Presidential Preferences and Judicial Voting, Logistic Regression Analysis of Non-consensus Cases, 1960-2001, Using NOMINATE Scores Before and After Ten Years on the Bench

Variable	*Under 10 years*	*10 years or more*
	Coefficient (Robust Std. Errors)	*Coefficient (Robust Std. Errors)*
Appointment Variables		
Appointing President Preferences (NOMINATE SCORES)	.3668*** (.092)	.3214*** (.098)
Same Party Senate Preference	.1124 (.192)	.6663*** (.215)
Home-State Political Elite	-.0011 (.002)	-.0004 (.003)
Case-Contemporary Variables		
Supreme Court Liberalism Issue Trend	.0083* (.004)	.0045 (.008)
Current President Preferences (NOMINATE SCORES)	-.0646 (.063)	-.0687 (.059)
Federal Government's Position	-.5446*** (.050)	-.3876*** (.062)
Circuit Percentage Democratic	.9268** (.312)	.8546** (.353)
Individual Judge Characteristics		
Race	.0203 (.221)	-.2446 (.177)
Gender	.0733 (.193)	-.0233 (.248)
Age During the Case	.0085 (.006)	-.0017 (.006)
Constant	-.8813* (.460)	-.3222 (.545)
N	4920	3589
Number of Judges	260	244
Prob > chi(2)	0.000	0.000
Pseudo R-square	0.053	0.040
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)		

Table 5.7: Presidential Preferences and Judicial Voting, Logistic Regression Analysis of Non-consensus Cases, 1960-2001, Using Social Liberalism Scores Before and After Ten Years on the Bench

Variable	***Under 10 years***	***10 years or more***
	Coefficient (Robust Std. Errors)	***Coefficient (Robust Std. Errors)***
Appointment Variables		
Appointing President Social Issues Preference	.0125** (.004)	.0105** (.004)
Same Party Senate Preference	.0774 (.312)	.6227* (.354)
Home-State Political Elite	.0047 (.003)	.0043 (.004)
Case-Contemporary Variables		
Supreme Court Social Issue Trend	.0124* (.006)	.0016 (.013)
Current President Social Issue Preference	-.0048 (.003)	.0028 (.003)
Federal Government's Position	-.4332*** (.089)	-.3670*** (.096)
Circuit Percentage Democratic	.6543 (.499)	.4578 (.492)
Individual Judge Characteristics		
Race	.1157 (.276)	-.0264 (.257)
Gender	.0853 (.226)	.1598 (.264)
Age During the Case	.0047 (.008)	-.0006 (.008)
Constant	-1.016 (.641)	-1.161 (.792)
N	2500	1791
Number of Judges	257	219
Prob > chi(2)	0.000	0.000
Pseudo R-square	0.058	0.043
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)		

Lastly, Table 5.8 displays models that include only cases dealing with economic issues and uses the Segal, Howard, and Timpone (2000) economic liberalism score as the measure for presidential policy preferences. Unlike the previous two tables, however, here we see that the concordance between the president's policy preferences and appellate court behaviors do not appear consistent over time. The presidential policy variable in column two of Table 5.8 is positive and statistically significant, again indicating that the more liberal the president the more likely their appointees will vote liberally in non-consensus cases dealing with economic issues. However, the variable fails to achieve a statistically significant effect in column three. Therefore, we cannot say that a judge who has served ten years or more and was appointed by a liberal president is statistically any more likely to support a liberal outcome than a judge serving over ten years and appointed by a conservative president in cases dealing with economic issues. This would, at least for economic cases, suggest that a president's ability to shape public policy through judicial nominations may be limited.

Similar to Tables 5.6 and 5.7, the other variables in Table 5.8 appear largely inconsequential. Two variables are statistically significant across the models. The federal government's position is against significant and negative, indicating that in these non-consensus cases judges are more likely to take the opposition position from the U.S. government when the U.S. is involved in the case. Also, similar to our models using NOMINATE scores, the circuit's percentage of active Democratic judges appears influential across time. Table 5.8 indicates that the more higher the number of active Democratic judges on the circuit, the more likely individual judges within that circuit will support liberal outcomes, even after controlling for other factors. Using the ten-year point as a cut point for analysis, the combined results from Tables 5.6, 5.7, and 5.8, appear to supports the relationship between presidential policy and judicial behaviors.

Table 5.8: Presidential Preferences and Judicial Voting, Logistic Regression Analysis of Non-consensus Cases, 1960-2001, Using Economic Liberalism Scores Before and After Ten Years on the Bench

Variable	*Under 10 years*	*10 years or more*
	Coefficient (Robust Std. Errors)	*Coefficient (Robust Std. Errors)*
Appointment Variables		
Appointing President Economic Issues Preference	.0088** (.004)	.0017 (.004)
Same Party Senate Preference	.2608 (.254)	.9161*** (.272)
Home-State Political Elite	-.0049* (.0026)	-.0037 (.003)
Case-Contemporary Variables		
Supreme Court Economic Issue Trend	.0102* (.005)	.0014 (.007)
Current President Economic Issue Preference	-.0035 (.002)	-.0027 (.003)
Federal Government's Position	-.4502*** (.068)	-.3890*** (.003)
Circuit Percentage Democratic	.9312* (.403)	1.471*** (.457)
Individual Judge Characteristics		
Race	-.0329 (.233)	-.2644 (.187)
Gender	.1506 (.233)	.0804 (.329)
Age During the Case	.0131 (.007)	-.0048 (.008)
Constant	-1.657** (.593)	-.0843 (.721)
N	2289	1581
Number of Judges	254	221
Prob > chi(2)	0.000	0.000
Pseudo R-square	0.045	0.041
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)		

Similar to our previous models examining judicial voting across all career periods, the predicted probabilities may be a useful way to examine the likelihood of a liberal vote based on the nominating president. Tables 5.9, 5.10, and 5.11 display the likelihood of a liberal vote for each nominating president for the models in Tables 5.6, 5.7, and 5.8, respectively. Column two of each table displays the predicted probabilities of a liberal vote for the first ten years of a judge's career. Column three displays the predicted probabilities of a liberal vote after ten years of judicial service. Column four in each table displays the changes in the likelihoods of a liberal vote as we move between columns two and three. The bottom two rows of each table display the mean likelihood of a liberal vote for all presidential appointees and the standard deviations across the cells for each column.

Table 5.9: Predicted Probabilities, NOMINATE Scores & Non-consensus Cases

PRESIDENT	**ALL CASE TYPES (NOMINATE SCORES)**		
	Likelihood of a Liberal Vote When the Judge Has Served Under 10 Years	**Likelihood of a Liberal Vote When the Judge Has Served 10 Years or More**	**Change**
Kennedy	63.21*	59.89*	**-3.32**
Johnson	63.34*	60.00*	**-3.34**
Nixon	52.93*	50.73*	**-2.2**
Ford	53.82*	51.52*	**-2.3**
Carter	64.67*	61.39*	**-3.28**
Reagan	52.50*	50.35*	**-2.15**
G.H.W. Bush	53.07*	60.89*	**+7.82**
Clinton	65.66*	62.12*	**-3.54**
Mean	58.34	57.11	**-1.23**
Standard Deviation	5.99	5.23	**-.076**

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

TABLE 5.10: Predicted Probabilities, Social Liberalism Scores, & Non-consensus Case

PRESIDENT	NON-CONSENSUS SOCIAL ISSUE CASES (SOCIAL LIBERALISM SCORES)		
	Likelihood of a Liberal Vote When the Judge Has Served Under 10 Years	Likelihood of a Liberal Vote When the Judge Has Served 10 Years or More	Change
Kennedy	72.95*	65.99*	**-6.96**
Johnson	68.52*	61.83*	**-6.69**
Nixon	62.44*	56.36*	**-6.08**
Ford	60.78*	54.90*	**-5.88**
Carter	68.68*	61.98*	**-6.70**
Reagan	54.27*	49.30*	**-4.97**
G.H.W. Bush	58.83*	53.20*	**-5.63**
Clinton	70.01*	63.21*	**-6.80**
Mean	64.56	58.35	**-6.21**
Standard Deviation	6.44	5.75	**-0.69**

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

Table 5.11: Predicted Probabilities, Economic Liberalism Scores, & Non-consensus Cases

PRESIDENT	NON-CONSENSUS ECONOMIC CASES (ECONOMIC LIBERALISM SCORES)		
	Under 10 Years	10 Years or More	Change
Kennedy	56.10*	53.39	**-2.71**
Johnson	58.84*	53.93	**-4.91**
Nixon	52.24*	52.64	**+0.40**
Ford	50.29*	52.27	**-1.98**
Carter	54.99*	53.18	**-1.81**
Reagan	45.64*	51.37	**+5.72**
G.H.W. Bush	49.03*	52.02	**+2.99**
Clinton	55.60*	53.29	**-2.31**
Mean	53.97	52.76	**-.121**
Standard Deviation	3.27	0.84	**-2.43**

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

Examining the predicted probabilities from the NOMINATE, social issue, and economic issue models, some general trends appear to occur. First, there are at least some differences in the likelihood of a liberal vote for all presidential appointees as they serve longer periods. This can be seen from the change column in each table. Second, the likelihood of a liberal vote generally decreases for all presidential appointees after those judges serve ten years or more. This can be seen by examining the change columns for each president but also from the change in the mean likelihood across all presidents, which is negative across the models. There are a few exceptions. For example, an appointee by G.H.W. Bush is more likely to support liberal outcomes after ten years on the bench over all, as shown in Table 5.9, and in economic cases, as shown in Table 5.11. For those presidents with high liberalism scores, the negative value (showing a lowered likelihood of support for liberal outcomes) may indicate a movement away from the nominating president's more liberal policy preferences. Similarly, positive changes in column four of each table for those with lower liberalism scores may also represent a movement away from a conservative president's policy preferences.

Tables 5.9, 5.10, and 5.11 do show that many Republican appointees became more likely to support conservative outcomes after the years on the bench, such as Table 5.10, where we see that a Reagan appointee is almost five percentage points less likely to support a liberal outcome in social issue cases after they have served ten years or more. These instances may represent a stronger concordance between presidential policy preference and long-term judicial behaviors, as judges vote more conservatively over time. However, the Democratic appointee likelihoods of a liberal vote all diminished over time, indicating that concordance between Democratic presidential policy preferences and Democratically-appointed judge's behaviors were weakening

over time. This signifies a limitation on the president's ability to influence public policy on a long-term basis through judicial appointments.

A third trend across the predicted probability tables is that the difference between the variations between presidential cohorts diminishes over time. This can be seen from the changes in the standard deviations in the cells, as displayed in the final row of each table. Here, we see that the standard deviations diminish when we move from the likelihoods of a liberal vote before and after the ten-year cut point. The shrinking standard deviation indicates that the differences in the likelihood of a liberal vote based on the appointing president becomes less distinct over time. Thus, even though our logistic regression models show a statistically significant relationship, the differences between appointees of different presidents appears to decline somewhat over time.

V.VII. Logistic Regression Results: Multiple Career Periods

Conducting analyses using votes before and after a judge's ten-year anniversary on the bench appears to show some evidence of continual concordance between presidential policy preferences and judicial behaviors. However, a more refined analysis may allow us to reject or confirm the presence of this concordance throughout the judge's career. To analyze the possibility of decay, models were conducted dividing the data into four periods since the judge's appointment. This analysis follows the models used by Segal, Timpone, and Howard (2000), who use four separate periods, but with at least three major modifications. First, this analysis examines judicial behaviors at the courts of appeals level rather than the Supreme Court. As mentioned above, the circuit courts decide thousands of cases per year, their decisions are rarely reviewed by the Supreme Court, with opinions that are binding precedents within the states included in that circuit, and the opinions are often persuasive precedents even outside of the circuit. This raises the opportunity for presidents to influence public policy through the

decisions that the president's appointees make during their careers on the bench. While the decisions made by circuit court judges may not be as far reaching as Supreme Court precedents, the frequency with which these circuit court opinions occur provides many opportunities to shape public policy through the judicial system.

A second major difference between this analysis and the Segal, Timpone, and Howard (2000) analysis is that slightly different career periods are used. The authors of the Supreme Court study examined Supreme Court justices' behaviors by dividing their data into the first four years of a justice's career, years five to ten, years eleven to twenty, and justice's behaviors after twenty years on the bench. The present analysis examines case votes during the first five years of a judge's career, votes between years six and ten, votes between years eleven and fifteen, and all judicial votes after a judge has been on the bench for sixteen years or more. These periods were selected for several reasons. First, the observations were distributed relatively evenly within each of these periods. Each of these periods divided the sample into groupings that represented between twenty-one to twenty-seven percent of the overall sample. However, only eleven percent of the observations stemmed from judges casting votes after serving twenty years or more. Relying on the Segal, Timpone, and Howard (2000) time frames would have created a vastly uneven distribution among the career-period sample sizes that could hinder the generalizations drawn from each sample. Second, this analysis uses the first five years as its first career period, rather than the first four years. Using the first five years created more evenly distributed samples, although a separate analysis (not shown) did not produced significantly different results if the first four years were used as the first career period. Further, the number of observations where the sitting president at the time the case was decided was also the appointing president of the judge casting the vote greatly diminishes after year five. Within the first career

period, including only those votes cast during the judge's first five years on the bench, the sitting president appointed the judge in approximately one-half of the observations. In a sample that includes observations by judges serving six to ten years, the number of observations where the nominating president is still in office drops to about five percent of the observations. This significant drop in the observations where an appointing president is still in office allows us to more clearly examine the nominating president's role as a cue giver in the first career period (the first five years) and allows the other career periods to be relatively free of instances where the nominating president is still in the White House. As for the other time frames, ten years was both the mean and median for the number of years of service by the judge per observation. Therefore, the six to ten year career period was used to maintain a center point around the median, as well as to create a relatively even distribution between the career period samples. The last two career periods, years eleven to fifteen and all votes by judges serving more than sixteen years, were selected because they insured the most evenly distributed time frames while allowing us the ability to test the theoretical expectations.

A third difference between the Segal, Timpone, and Howard (2000) models and the present analysis concerns the dependent variable. In their analysis of Supreme Court behaviors, the authors used the overall voting records of judges as their dependent variable. This entailed examining the overall percentage of liberal votes cast by a justice during the designated career periods. The models used in this dissertation examine the individual judges' votes at the case level. As mentioned above, the main advantage to the models used here is that by focusing on the judges' votes as the dependent variable the models are able to include many control variables, where as the Supreme Court study was not able to include any such controls. This allows us to examine the relationship between the appointing president's policy preferences and

judicial behaviors while controlling for outside factors such as senatorial courtesy, Supreme Court ideology, factors unique to the circuits, individual judge's characteristics, and other case-specific factors that were not examined in the Supreme Court examination. If the concordance between the presidential preferences and judicial behaviors continues to exist over time, even after controlling for other influences on judicial behaviors, we can more safely say that the president has some influence, even if it is indirect, over public policy years after they leave office. However, if the concordance appears to fade over time, then the president's ability to influence policy may be minimized.

To increase the consistency across the career-period samples, once again only those appointees that served ten or more years were included in these period-specific models. This again ensures that all judges that cast votes in the first period have the possibility of casting votes in multiple other timeframes and that the data is not influenced by those judges that serve relatively short terms. A minimum of ten years or more of service was also used in Epstein, Hoekstra, Segal, and Spaeth's (1998) examination of changes in Supreme Court justices' political preferences.

The models divided by the number of years since the appointment suggest that concordance between an appointing president's policy preference and the judicial votes of the appointee does exist, although it is not clearly consistent over time. Table 5.12.a displays the logistic regression results with the data divided by the career periods. Our main independent variable is the appointing president's NOMINATE score. Columns two through five display the four separate models. The first variable listed is our measure of presidential policy preferences. In this first row of variables, we see that in each time period of the judge's career the presidential preference variables is positive and statistically significant. This indicates that, the more liberal

Table 5.12.a: Logistic Regression: Presidential Preferences and Judicial Voting, All Non-Consensus Cases from 1960-2001, Using NOMINATE Scores and Multiple Career Periods.

VARIABLE	*FIRST FIVE YEARS*	*SIX TO TEN YEARS*	*ELEVEN TO FIFTEEN YEARS*	*SIXTEEN OR MORE YEARS*
	Coefficient (Robust Std. Errors)	*Coefficient (Robust Std. Errors)*	*Coefficient (Robust Std. Errors)*	*Coefficient (Robust Std. Errors)*
Appointment Variables				
Appointing President Preference (NOMINATE SCORE)	.3685** (.136)	.2290* (.139)	.2343* (.137)	.5188*** (.162)
Same Party Senate Preference	.1501 (.286)	.1539 (.290)	.7530** (.325)	.5514* (.272)
Home-State Political Elite	-.0008 (.003)	.1539 (.290)	.0003 (.003)	-.0023 (.004)
Case-Contemporary Variables				
Supreme Court Overall Liberalism Trend	.0101* (.006)	.0016 (.003)	.0077 (.012)	-.0029 (.013)
Current President Preference	__	-.2135 (.093)	-.0139 (.079)	-.0541 (.119)
Federal Government's Position	-.5527*** (.064)	-.4940*** (.072)	-.4090*** (.084)	-.3882*** (.090)
Circuit Percentage Democratic	1.014* (.464)	.9899** (.402)	1.101** (.479)	.7081 (.598)
Individual Judge Characteristics				
Race	.1265 (.234)	-.0496 (.273)	-.2765 (.274)	-.1927 (.250)
Gender	.1503 (.228)	-.0173 (.268)	.1699 (.283)	-.4890 (.291)
Age During the Case	.0045 (.009)	.0087 (.007)	.0026 (.009)	-.0202* (.010)
Constant	-.7872 (.600)	-.6627 (.584)	-.8899 (.818)	1.432 (1.04)
N	2809	2572	1974	1154
Number of Judges	258	254	231	129
Prob > chi(2)	0.000	0.000	0.000	0.000
Pseudo R-square	0.066	0.039	0.043	0.051
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)				

the appointing president, the more likely the judicial appointee will support a liberal outcome. This relationship appears to exist across the judges' careers. Other than the federal government position variable, the presidential preference variables is the most consistent across all the time periods, even after controlling for other influential factors. This suggests that not only do presidents possess the ability to influence public policy through judicial nominations, but that they are in fact successful at doing so across time.

Aside from the federal government's position in the case, only the individual circuits appear nearly as important over time. The variable for the percentage of active Democratic judges on a circuit is positive and statistically significant in the first three models, columns two, three, and four. These results in Table 5.12.a suggest that the more active Democratic judges on the circuit, the more likely individual judges will support liberal outcomes during the first fifteen years of the judge's career. The judges appear to act more independently from the circuit personnel after serving sixteen years on the court, as displayed in column five of Table 5.12.a where the variable, although still positive, fails to achieve statistical significance. However, the presidential preference variable remains statistically significant even after the judge served sixteen years on the bench.

As with the previous models, we can again examine the predicted probabilities of a liberal vote to examine the magnitude of the affect that the appointing president may have on judicial outcomes. Table 5.12.b displays the predicted probabilities of a liberal vote based on the nominating president and on the judges' length of career at the time the votes were cast. The second column displays the likelihood of supporting a liberal outcome during the first five years of an appointee's career. Column two displays the likelihood during the judge's sixth through the tenth year. Column four displays years eleven through fifteen, and the final column displays

the likelihood of a liberal vote after the appointees have served sixteen or more years. For example, in column two we see that President Carter's appointees are likely to support liberal outcomes over sixty-four percent of the time during the appointees' first five years on the bench. However, a Reagan appointee is only likely to support a liberal outcome in fifty-two percent of the cases. Therefore, a Carter appointee in her or his first five years on the bench is over twelve percent more likely to vote liberally than a Reagan appointee, holding all other variables at their means.

TABLE 5.12.b: Predicted Probabilities Using NOMINATE Scores & Non-consensus Cases (Holding All Other Variables At Their Means)

PRESIDENT	LIKELIHOOD OF A LIBERAL VOTE			
	First Five Years	***Six to Ten Years***	***Eleven to Fifteen Years***	***Sixteen Or More Years***
Kennedy	63.17*	60.37*	58.57*	63.42*
Johnson	63.30*	60.45*	58.65*	63.61*
Nixon	52.84*	53.90*	51.88*	48.77*
Ford	53.74*	54.45*	52.46*	50.04*
Carter	64.83*	61.44*	59.68*	65.75*
Reagan	52.41*	53.63*	51.61*	48.16*
G.H.W. Bush	52.98*	53.99*	51.98*	48.98*
Clinton	65.64*	61.96*	60.22*	66.86*
Mean	58.61	57.52	55.63	56.95
Standard Deviation	6.07	3.82	3.94	8.60

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

The three trends found in the previous examination of predicted probabilities in Tables 5.9 through 5.11 still appear, but are not as consistent in the four career periods models as they were in the ten-year cut period models. Once again, there are differences in the predicted probabilities as we move across the columns in Table 5.12.b. In addition, these changes appear to move in the conservative direction, as the likelihood of a liberal vote generally decreases

across the time frames, although not always. For Republican presidents, this indicates that the appointees' behaviors may in fact be moving closer to the nominating president's policy preferences. As for the Democratic presidents who had more liberal policy preference, a decrease in the likelihood of a liberal vote may indicate a movement away from the appointing president's policy preference. We can also see this more conservative trend in the overall means near the bottom of Table 5.12.b. Here we see that the mean likelihood of supporting a liberal outcome is highest in the first career period, and then declines. The likelihood of a liberal vote increases during the final time frame, but still does not achieve the level reached during the first period.

While the results from the models using NOMINATE scores appear to show some consistency in presidential preferences and appointee behaviors, analyses using our other measures of presidential preferences present a somewhat different story. Table 5.13.a displays the logistic regression results using the president's social liberalism score as our main independent variable and only examining cases with social issues. Again, columns two through five display four separate models that differ only by the number of years since the judge's appointment. While our measure of presidential policy preferences (NOMINATE scores) was significant throughout the judge's career in Table 5.12.a, Table 5.13.a (using Social Liberalism Scores) suggests that ideological concordance between the president's policy preference and appointee's behaviors occurs only in the early stages of the appointee's career. As the models in columns two and three display, policy concordance appears to exist in the first ten years of an appointee's career. The presidential policy preference variable is positive and statistically significant in these two time periods. This suggests that for the first decade of a judges' career,

Table 5.13.a: Logistic Regression: Presidential Preferences and Judicial Voting, All Non-Consensus Social Issue Cases from 1960-2001, Using Social Liberalism Scores and Multiple Career Periods

Variable	***First Five Years***	***Six to Ten Years***	***Eleven to Fifteen Years***	***Sixteen Or More Years***
	Coefficient (Robust Std. Errors)	***Coefficient (Robust Std. Errors)***	***Coefficient (Robust Std. Errors)***	***Coefficient (Robust Std. Errors)***
Appointment Variables				
Appointing President Social Issues Preference	.0137** (.006)	.0100* (.006)	.0089 (.006)	.0113 (.009)
Same Party Senate Preference	.1372 (.401)	.0531 (.427)	.8040 (.493)	.7407 (.548)
Home-State Political Elite	.0082* (.004)	.0012 (.004)	.0045 (.004)	.0041 (.007)
Case-Contemporary Variables				
Supreme Court Social Issue Trend	.0125* (.007)	.0060 (.012)	-.0104 (.020)	.0165 (.022)
Current President Social Issue Preference	__	-.0041 (.005)	.0057 (.005)	-.0034 (.007)
Federal Government's Position	-.4165*** (.110)	-.4487*** (.131)	-.4004*** (.126)	-.2825 (.175)
Circuit Percentage Democratic	.7544 (.658)	.7419 (.633)	.6837 (.705)	-.1556 (1.000)
Individual Judge Characteristics				
Race	.3724 (.331)	.0020 (.364)	-.1533 (.365)	.1561 (.355)
Gender	.1286 (.267)	.1766 (.313)	.2941 (.373)	-.3223 (.410)
Age During the Case	-.0013 (.012)	.0131 (.011)	.0057 (.014)	-.0115 (.018)
Constant	-.9714 (.798)	-1.225 (.801)	-1.371 (1.174)	-.3012 (1.634)
N	1406	1325	1007	555
Number of Judges	254	245	201	116
Prob > chi(2)	0.000	0.001	0.000	0.091
Pseudo R-square	0.080	0.043	0.054	0.052
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)				

the more liberal the appointing president, the more likely that judge will support liberal outcomes in cases involving social issues. However, as we see in the models in columns four and five, after ten years on the bench a judge nominated by a conservative president is statistically no more likely to support a liberal outcome than a judge nominated by a more liberal president.

Looking at the control variables in Table 5.13.a, the variable for the federal government's position was the only other variable to achieve statistical significance across multiple time periods. This variable was consistently negative and significant except in the final career period, column five. Other variables, such as the home-state political elite ideology and the Supreme Court trends, achieved statistical significance in the first career period, column two, but not in the other models. The individual characteristics of the judges themselves did not appear influential in any of the models.

Once again, the predicated probabilities of a liberal vote may provide meaningful insight into the differences in judicial behaviors between presidential appointees and between different career periods. Table 5.13.b displays the likelihood of a liberal vote, holding all other control variables at the means. The predicted probabilities are reported for time periods eleven to fifteen and sixteen or more years for comparisons purpose, but it is important to remember that there are no statistically significant differences based on the presidential preferences for these periods. Again, we see a general increase in the likelihood of a conservative vote as the judges serve more time on the bench. This may be viewed by comparing the changes across columns or by comparing the means listed near the bottom of the table. For Republican presidents, this may represent a movement towards the appointing president's policy preferences. For Democratic presidents, this likely represents a movement away from their policy goals. The standard deviations become smaller across the first three time periods, suggesting that judicial behaviors

become less distinct based on the appointing president alone. However, more variation does exits in the final time period, sixteen years or more.

Table 5.13.b.: Predicted Probabilities Using Social Liberalism Scores & Non-consensus Cases (Holding All Other Variables At Their Means)

PRESIDENT	LIKELIHOOD OF A LIBERAL VOTE			
	First Five Years	***Six to Ten Years***	***Eleven to Fifteen Years***	***Sixteen Or More Years***
Kennedy	74.46*	69.42*	65.10	66.81
Johnson	69.75*	65.68*	61.54	62.40
Nixon	63.20*	60.70*	56.90	56.55
Ford	61.39*	59.36*	55.67	54.99
Carter	69.92*	65.82*	61.67	62.56
Reagan	54.28*	54.15*	50.92	48.99
G.H.W. Bush	59.26*	57.79*	54.23	53.17
Clinton	71.35*	66.93*	62.72	63.87
Mean	65.45	62.45	58.59	58.67
Standard Deviation	6.96	5.26	4.88	6.15

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

Table 5.14.a displays models that examine the president's economic preferences and judicial behaviors in cases involving economic issues. The first variable is our main variable of interest, the president's policy preferences, operationalized by the Segal, Timpone, and Howard's (2000) economic liberalism score. Although this variable achieved statistical significance in the full model in column four of Table 5.5.a, once we examine individual behaviors at certain points in the judges' careers, there does not appear to be policy concordance between the appointing president's preferences and judicial behaviors. This variable only achieves statistical significance once, column three (years six to nine of an appointee's career). This is unusual in that we would expect the policy concordance to occur in the first career period,

Table 5.14.a: Logistic Regression: Presidential Preferences and Judicial Voting, All Non-Consensus Economic Cases from 1960-2001, Using Economic Liberalism Scores and Multiple Career Periods.

Variable	*First Five Years*	*Six to Ten Years*	*Eleven to Fifteen Years*	*Sixteen Or More Years*
	Coefficient (Robust Std. Errors)	*Coefficient (Robust Std. Errors)*	*Coefficient (Robust Std. Errors)*	*Coefficient (Robust Std. Errors)*
Appointment Variables				
Appointing President Economic Preference	.0056 (.006)	.0112* (.006)	-.0047 (.006)	.0089 (.008)
Same Party Senate Preference	.4051 (.383)	.0657 (.343)	.9800** (.400)	.7062* (.403)
Home-State Political Elite	-.0060* (.004)	-.0032 (.004)	-.0026 (.005)	-.0027 (.005)
Case-Contemporary Variables				
Supreme Court Economic Trend	.0059 (.007)	.0177** (.007)	-.0034 (.009)	.0052 (.014)
Current President Economic Preference	___	-.0078* (.004)	-.0007 (.004)	-.0011 (.007)
Federal Government's Position	-.4349*** (.097)	-.4135*** (.106)	-.3904*** (.130)	-.4377** (.149)
Circuit Percentage Democratic	1.170* (.573)	.4614 (.641)	2.318*** (.668)	1.017 (.691)
Individual Judge Characteristics				
Race	.0118 (.272)	-.1994 (.290)	-.3130 (.244)	-.2490 (.515)
Gender	.3550 (.319)	-.2924 (.362)	.3141 (.357)	-.1612 (.520)
Age During the Case	.0138 (.011)	.0051 (.011)	-.0017 (.013)	-.0262* (.013)
Constant	-1.600* (.825)	-1.486* (.861)	-.4352 (1.04)	.9236 (1.43)
N	1344	1160	862	600
Number of Judges	246	233	202	120
Prob > chi(2)	0.000	0.000	0.000	0.001
Pseudo R-square	0.053	0.041	0.050	0.055
Notes: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)				

if at all. During this first career period, the president may still be in office to act as a cue giver for new appointees. Further, the judges have had less time to be socialized by their peers on the circuit, which could influence the new judge's decisions. Further still, if new appointees feel any sense of loyalty or a duty to follow the appointing president, we would expect this to occur in the first years after the appointee takes office. However, in Table 5.14.a, policy concordance does not appear to occur in the first career period, but only after the judge has been on the bench for over five years, and even then, the concordance is short lived. In fact, although not statistically significant, there is an indication of a negative relationship between the president's preferences and judicial behaviors in column three (years ten to fifteen of the judges' careers) which clearly indicates some limitations on the president's long-term ability to shape public policy through the courts. Part of these null findings may be due to the fact that economic issues are more difficult to categorize on a liberal/conservative spectrum. However, the results, including the negative coefficient, also suggest that concordance between the appointing president's economic policy preferences and judicial behaviors are very unstable.

As for the other variables in Table 5.14.a, again only the federal government's position in the case is consistent across the career period models. This variable is consistently negative and statistically significant. Again, this is in part explained by the data, which include only those cases with a dissent or overturning a lower court ruling. With these conditions on the data, the observations are in some sense already set up to go against the party that normally wins on appeal, namely the stronger party such as the national government. Other than the Unites States government's position, no other variable consistently achieved statistical significance across the career period models.

Similar to the other models, Table 5.14.b. displays the predicted likelihoods of a liberal vote based on the appointing president and the appointees' career periods, holding other factors constant. Again, all predicted probabilities are reported although, again there are no statistically significant differences based on the presidential preferences for three of the four periods. Unlike in the previous tables concerning probabilities, the row displaying the column means indicates that the likelihood of a liberal vote does not significantly decrease across the career periods, but remains generally stable at about fifty-two percent. The standard deviations among the columns do fluctuate, but not in a discernable trend. As expected with the inconsistency of the president's policy preference variable in Table 5.14.a, the predicted probabilities change dramatically between career periods. For example, a Johnson appointee appears to support a liberal outcome about forty-nine percent of the time during years eleven to fifteen of their careers. However, after serving sixteen or more years on the bench, the likelihood of a Johnson appointee

Table 5.14.b: Predicted Probabilities Using Economic Liberalism Scores & Non-consensus Cases (Holding All Other Variables At Their Means)

PRESIDENT	LIKELIHOOD OF A LIBERAL VOTE			
	First Five Years	***Six to Ten Years***	***Eleven to Fifteen Years***	***Sixteen Or More Years***
Kennedy	54.74	56.19*	50.76	57.62
Johnson	56.62	59.69*	49.27	61.90
Nixon	52.25	51.25*	52.82	51.51
Ford	51.00	48.75*	53.86	48.41
Carter	54.02	54.77*	51.36	55.87
Reagan	48.01	42.84*	56.30	41.12
G.H.W. Bush	50.19	47.15*	54.32	46.43
Clinton	54.42	55.55*	51.03	56.83
Mean	52.66	52.02	52.47	52.46
Standard Deviation	2.82	5.55	2.29	6.85

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

supporting a liberal outcome increases over twelve percentage points, to almost sixty-two percent. While the percentages alone may appear small, if these changes are thought about in real terms, which could include hundreds of cases across the country over time, this slight percentage change could represent significant differences in case outcome over time.

While the analysis using NOMINATE scores suggests that the policy preferences of the president appear to be important factors through the judges' careers, the analyses in Tables 5.13.a. and 5.14.a. suggest that policy concordance may be inconsistent over time. Table 5.13.a. shows that the presidential liberalism variable is positive and statistically significant early in the judge's career, but then loses statistical significance, suggesting that no relationship can be supported between a president's policy preferences and appointee votes later in the judges' careers. Our presidential policy preference variable is even more inconsistent when economic issues are involved. While it is difficult to prove that no relationship exists from null findings, the lack of statistical significance in the appointing president's preference variable suggests that distinctions cannot be made between judicial behaviors based on the appointing president alone after circuit court judges have served for ten years. The loss of concordance in Table 5.13.a. in cases dealing with social issues and the general lack of concordance in Table 5.14.a. in cases dealing with economic models indicates a limit of long-term relationship between the appointing president's policy preferences and appointees' judicial decisions in cases with social issues.

V.VIII. Logistic Regression Results: Using All Cases

For comparison purposes, the analyses completed above using only non-consensus cases were replicated using all cases from 1960 to 2001 and examining all votes by judges that served ten years or more. While non-unanimous opinions and those where the court overturns a district court ruling are thought to be those cases of more significant policy importance (Atkins and

Green 1976; Goldman 1969; Scherer 2005), it is possible that even unanimous cases present an opportunity for circuit court judges to make decisions that deeply impact legal rights and policy goals. Therefore, to assess these possibilities as well as to increase the generalizablity of the findings concerning non-consensus cases, it is important to examine these analyses within all cases.

Table 5.15.a presents a similar analysis to Table 5.5.a above, except here, we include all cases. The results are generally similar, particularly with our main independent variable, presidential policy preferences. In columns three, four, and five of Table 5.15.a, the measure of presidential policy preference is positive and statistically significant whether the model uses NOMINATE scores, the social liberalism measure, or the economic liberalism measure. Even after controlling for such factors as senatorial courtesy, home state political elites, individual judge characteristics, and controls for the circuit and case, the positive coefficients for the presidential liberalism variables indicate that the more liberal the appointing president, the more likely an appointee of that president will support a liberal outcome in circuit court cases. Circuit court characteristics appear significant, just as in the non-consensus models. As the percentage of Democratic judges increase in a circuit, each individual judge becomes more likely to support liberal outcomes, regardless of the appointing president. In addition, as expected, the federal government's position in the case is positive and statistically significant, indicating that if the federal government is a party in the case and argues the liberal position, the circuit court judge is more likely to support that position. This supports the general theories such as party-capacity theory and the unique position of the federal government as a litigant in federal court. However, as noted above, when we already know that there is disagreement on the circuit court or between the circuit and district courts, the federal government is less likely to be supported.

Table 5.15.a: Presidential Preferences and Judicial Voting, Logistic Regression Analysis of All Cases (Consensus and Non-Consensus), 1960-2001

Variable	*All Issues Cases*	*Social Issue Cases*	*Economic Issue Cases*
Appointment Variables	***Coefficient (Robust Std. Errors)***	***Coefficient (Robust Std. Errors)***	***Coefficient (Robust Std. Errors)***
Appoint President's NOMINATE Score	.1961*** (.046)	--.	--
Appointing President's Social Liberalism Score	--	.0059** (.002)	--
Appointing President's Economic Liberalism Score	--	--	.0059*** (.002)
Same Party Senate Preference	.1227 (.097)	.1510 (.151)	.0306 (.103)
Home-State Political Elite	4.5e-08 (.001)	.0028* (.002)	-.0016 (.001)
Case-Contemporary Variables			
Supreme Court Liberalism Trend	-.0038 (.003)	-.0124*** (.003)	.0080*** (.002)
Current President Liberalism	-.0520* (.030)	-.0005 (.001)	-.0035** (.001)
Federal Government's Position	.9208*** (.030)	.7652*** (.047)	.7403*** (.038)
Circuit Percentage Democratic	1.088*** (.166)	1.345*** (.220)	.8040*** (.204)
Individual Judge Characteristics			
Race	.0085 (.116)	.0525 (.120)	.0561 (.133)
Gender	-.0250 (.117)	.0997 (.148)	-.0235 (.100)
Age During the Case	-.0015 (.002)	-.0021 (.004)	-.0023 (.003)
Constant	-.5319* (.236)	-1.004** (.321)	-.8092* (.310)
N	23953	12445	10401
Number of Judges	265	264	263
Prob > chi(2)	0.000	0.000	0.000
Pseudo R-square	0.079	0.051	0.051
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)			

Again, an examination of the predicted probabilities may allow for a more in-depth analysis of the voting patterns of presidential cohorts. Table 5.15.b presents the likelihood of a liberal vote as derived from the models presented in Table 5.15.a. Compared to Table 5.5.b which examines the likelihood of a liberal vote in only non-consensus cases, Table 5.15.b shows that overall all judges appear more conservative when examining all cases. When comparing columns two and three from Table 5.5.b with Table 5.15.b, we see that judges are between ten and nearly forty percentage points less likely to support liberal outcomes when all cases are considered as in Table 5.15.b. For example, as displayed in column three of Table 5.5.b, an appointee by President Johnson will generally support a liberal outcome in nearly seventy-percent of social-issue cases where there is a dissent or when the circuit court is overturning a lower court decision. However, as seen in column three of Table 5.15.b, this likelihood drops significantly, with a Johnson appointee predicted to support a liberal outcome in only about thirty-percent of the social-issue cases when all cases (unanimous and non-unanimous, affirmations and reversals) are considered.

This is expected as many of the routine cases heard by the circuit courts would entail affirming the lower court rulings and would appear as conservative decisions, even though the policy impact of the decision may be minimal. For example, criminal defendants have the right to appeal their convictions and often do even if there is no clear mistake committed by the trial court. One of these routine criminal appeals will likely result in upholding the conviction and appear as a conservative decision. Because of the high number of these routine cases, it is not surprising that the judges in general, appear more conservative when all cases are examined as opposed to exploring non-consensus cases.

Table 5.15.b: Predicted Probabilities Using Economic Liberalism Scores & Non-consensus Cases (Holding All Other Variables At Their Means)

President	All Cases, All Career Periods	All Social Issue Cases, All Career Periods	All Economic Cases, All Career Periods
Kennedy	39.96*	28.48*	53.03*
Johnson	40.03*	30.59*	54.91*
Nixon	34.66*	25.95*	50.41*
Ford	35.10*	25.32*	49.10*
Carter	40.93*	28.55*	52.28*
Reagan	34.45*	23.01*	45.97*
G.H.W. Bush	34.74*	24.60*	48.26*
Clinton	41.34*	29.16*	52.69*
Mean	37.65	26.96	50.83
Standard Deviation	3.15	2.61	2.94

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

Interestingly, when examining economic cases, the likelihood of a liberal vote when all cases are examined as opposed to exploring non-consensus cases does not vary as greatly. For example, looking at column four of Table 5.5.b, we see that a Kennedy appointee will support a liberal outcome in about 54.5 percent of the economic-issue cases he or she is involved that have either a dissent or a reversal of the district court decision. However, this number drops by only about one-and-one-half a percentage point when unanimous cases and affirmations of the lower court ruling are added to the models. This trend continues across other presidential cohorts, as the changes between column four in Table 5.5.b and Table 5.15.b appear much less dramatic than the changes between columns two and three of the two tables.

Examining models that employ all cases and use a ten-year cut point also provides similar results from the ten-year cut point models with only non-consensus cases. Table 5.16.a displays the logistic regression results of two models. Column two of Table 5.16.a displays influencing

Table 5.16.a: Presidential Preferences and Judicial Voting, Logistic Regression Analysis of All Cases (Consensus and Non-consensus), 1960-2001, Using NOMINATE Scores Before and After Ten Years on the Bench

Variable	*Under 10 years*	*10 years or more*
	Coefficient (Robust Std. Errors)	*Coefficient (Robust Std. Errors)*
Appointment Variables		
Appointing President Preferences (NOMINATE SCORES)	.1750** (.065)	.2167*** (.061)
Same Party Senate Preference	-.0959 (.130)	.4416*** (.130)
Home-State Political Elite	-.0003 (.001)	.0002 (.002)
Case-Contemporary Variables		
Supreme Court Liberalism Trend	-.0014 (.003)	-.0006 (.005)
Current President Preferences (NOMINATE SCORES)	-.0344 (.045)	-.0590 (.037)
Federal Government's Position	.9120*** (.036)	.9307*** (.044)
Circuit Percentage Democratic	1.065*** (.154)	1.223*** (.221)
Individual Judge Characteristics		
Race	.1662 (.154)	-.1585 (.116)
Gender	.0585 (.106)	-.1170 (.165)
Age During the Case	.0026 (.004)	-.0067* (.004)
Constant	-.805388 (.300)	-.4286 (.334)
N	13893	10060
Number of Judges	262	254
Prob > chi(2)	0.000	0.000
Pseudo R-square	0.077	0.088
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)		

factors on judicial decision making when a circuit judge has served less than ten years on the bench while column three examines judicial behaviors after a judge has served ten years or more. These models also use the NOMINATE scores as the measure for presidential policy preferences.

Similar to the non-consensus models, we see that the appointing president's policy preference variables appear positive and statistically significant in both columns two and three of Table 5.16.a. This indicates that presidents that are more liberal appointed circuit court judges that were more likely to support liberal outcomes, regardless of whether the appointee was in their first decade of service or had served for a longer period. An examination of the predicted probabilities will allow further inspection of the differences between presidential appointees. As seen in Table 5.16.b, Democratically appointed judges appear more likely to support liberal outcomes, but the differences are not as great as in the non-consensus cases alone. Appointees from each president appeared more conservative, suggesting again that the high number of routine cases generally have a conservative outcome. In addition, the changes among judges' behaviors from their first decade on the bench and their behaviors after ten years on the bench do not change as much as in our previous models using only non-consensus cases.

Similar results are achieved when examining a model including all cases and using the social liberalism measures of presidential preferences. As in the social issue model examining only non-consensus cases, Table 5.17.a shows that the presidential preference variable is positive and statistically significant in each of the time periods. Again, this indicates that the more liberal the appointing president, the more likely his appointees will support liberal outcomes, regardless of whether they have served less than or more than ten years on the bench.

Table 5.16.b: Predicted Probabilities Using NOMINATE Scores, Consensus & Non-consensus Cases (Holding All Other Variables At Their Means)

PRESIDENT	LIKELIHOOD OF A LIBERAL VOTE		
	Under 10 Years	**10 Years or More**	**Change**
Kennedy	40.59*	38.89*	**-1.70**
Johnson	40.65*	38.97*	**-1.68**
Nixon	35.82*	33.13*	**-2.69**
Ford	36.21*	33.60*	**-2.61**
Carter	41.46*	39.95*	**-1.51**
Reagan	35.63*	32.91*	**-2.72**
G.H.W. Bush	35.88*	33.21*	**-2.67**
Clinton	41.83*	40.41*	**-1.42**
Mean	38.51	36.38	**-2.13**
Standard Deviation	2.84	3.43	**+.59**

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

The predicted probabilities displayed in Table 5.17.b continue to show the general differences between examining all cases and non-consensus cases alone. The judges overall again appear more conservative, as their likelihoods of supporting liberal outcomes are much lower than in Table 5.10, where only non-consensus cases are examined. The changes in behaviors between the first decade and later years are also more consistent, as noted by the smaller values in Table 5.17.b, column four, than in column four of Table 5.10. The standard deviations, noted in row thirteen, are also smaller, suggesting that there is more consistency in judicial behaviors across presidential administrations.

Our last analysis using the ten-year cut points examines economic cases and uses the economic liberalism scores as our measure of presidential policy preferences. In Table 5.18.a, however, we see some differences when we examine all cases as opposed to non-consensus

Table 5.17.a: Presidential Preferences and Judicial Voting, Logistic Regression Analysis of All Cases (Consensus and Non-consensus), 1960-2001, Using Social Liberalism Scores Before and After Ten Years on the Bench

Variable	*Under 10 years*	*10 years or more*
	Coefficient (Robust Std. Errors)	*Coefficient (Robust Std. Errors)*
Appointment Variables		
Appointing President Social Issues Preference	.0057* (.003)	.0060* (.003)
Same Party Senate Preference	-.1057 (.194)	.5595** (.231)
Home-State Political Elite	.0015 (.002)	.0036 (.002)
Case-Contemporary Variables		
Supreme Court Social Issue Trend	-.0129*** (.004)	.0054 (.008)
Current President Social Issue Preference	-.0006 (.002)	-.0006 (.002)
Federal Government's Position	.7848*** (.062)	.7576*** (.066)
Circuit Percentage Democratic	1.561*** (.342)	1.120*** (.314)
Individual Judge Characteristics		
Race	.1973 (.161)	-.1739 (.143)
Gender	.0878 (.134)	.1151 (.234)
Age During the Case	.0015 (.005)	-.0030 (.006)
Constant	-1.066** (.371)	-1.593** (.561)
N	7223	5222
Number of Judges	261	243
Prob > chi(2)	0.000	0.000
Pseudo R-square	0.051	0.059
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)		

TABLE 5.17.b: Predicted Probabilities Using Social Liberalism Scores, Consensus & Non-consensus Cases (Holding All Other Variables At Their Means)

PRESIDENT	LIKELIHOOD OF A LIBERAL VOTE		
	Under 10 Years	**10 Years or More**	**Change**
Kennedy	28.74*	27.81*	**-0.93**
Johnson	30.77*	29.91*	**-0.86**
Nixon	26.30*	25.30*	**-1.00**
Ford	25.69*	24.97*	**-0.72**
Carter	25.88*	27.88*	**+2.00**
Reagan	23.44*	22.38*	**-1.06**
G.H.W. Bush	24.99*	23.96*	**-1.03**
Clinton	29.40*	28.49*	**-0.91**
Mean	26.9	26.34	**-0.56**
Standard Deviation	2.48	2.57	**+0.09**

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

cases only. In our examination of non-consensus cases in Table 5.8, ideological concordance between the appointing president's policy preferences and the circuit appointees' behaviors occurred in only the first ten years of the judges' careers. However, when we examine all economic cases, policy concordance occurs across both time frames. Part of the explanation may be due to the data, as far more observations in Table 5.18.a may make achieving statistically significant results more likely (Gujarati 2003).

Lastly, we can examine a more detailed analysis of judicial behavioral changes over time by dividing the data into multiple periods. Rather than examine ideological concordance in broad terms using one cut point, multiple periods may allow a better understanding of a president's long-term policy influence. Table 5.19.a presents models using NOMINATE scores, consensus and non-consensus cases, and examines judicial behaviors during four different career periods. Similar to the models present in Table 5.12.a that examined NOMINATE scores in

Table 5.18.a: Presidential Preferences and Judicial Voting, Logistic Regression Analysis of All Cases (Consensus and Non-consensus), 1960-2001, Using Economic Liberalism Scores Before and After Ten Years on the Bench

Variable	*Under 10 years*	*10 years or more*
	Coefficient (Robust Std. Errors)	*Coefficient (Robust Std. Errors)*
Appointment Variables		
Appointing President Economic Issues Preference	.0082*** (.002)	.0047* (.002)
Same Party Senate Preference	-.1732 (.156)	.3295* (.146)
Home-State Political Elite	-.0016 (.002)	-.0012 (.002)
Case-Contemporary Variables		
Supreme Court Economic Issue Trend	.0105** (.003)	.0090* (.004)
Current President Economic Issue Preference	-.0045** (.002)	-.0015 (.002)
Federal Government's Position	.7247*** (.046)	.7632*** (.064)
Circuit Percentage Democratic	.4650* (.277)	1.398*** (.294)
Individual Judge Characteristics		
Race	.0889 (.186)	.0392 (.107)
Gender	.0541 (.118)	-.1576 (.161)
Age During the Case	.0029 (.005)	-.0143** (.005)
Constant	-1.223*** (.379)	-.3480 (.449)
N	6306	4095
Number of Judges	260	237
Prob > chi(2)	0.000	0.000
Pseudo R-square	0.048	0.063
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)		

Table 5.18.b: Predicted Probabilities For Economic Cases, Using Economic Liberalism Scores, Consensus & Non-consensus Cases (Holding All Other Variables At Their Means)

PRESIDENT	LIKELIHOOD OF A LIBERAL VOTE		
	Under 10 Years	10 Years or More	Change
Kennedy	54.82*	51.44*	**-3.38**
Johnson	57.39*	52.93*	**-4.46**
Nixon	51.23*	49.36*	**-1.87**
Ford	49.41*	48.32*	**-1.09**
Carter	53.79*	50.84*	**-2.95**
Reagan	45.11*	45.84*	**+0.73**
G.H.W. Bush	48.25*	47.65*	**-0.60**
Clinton	54.35*	51.17*	**-3.18**
Mean	51.80	49.69	**-2.11**
Standard Deviation	4.04	2.33	**-1.71**

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

non-consensus cases, the presidential policy preference variable here appears positive and statistically significant across three of the four time periods. It fails to achieve statistical significance in the period of six to ten years of the appointee's career. Therefore, ideological concordance between the appointing president's policy preferences and his appointees' voting behaviors exists over most of the appointees' careers, even considering routine cases where judges may have less opportunity to assert their preferences and after controlling for several other factors. The federal government variable appears significant, again supporting their relative strength as litigants. The circuits' partisan compositions also mattered. As the percentage of Democratic judges in a circuit increases, an individual judge's support of liberal outcomes also increases, even after controlling for the appointing president's preferences and other factors.

Table 5.19.a: Logistic Regression: Presidential Preferences and Judicial Voting, All Economic Cases (Non-Consensus & Consensus) from 1960-2001, Using NOMINATE Scores and Multiple Career Periods.

Variable	*First Five Years*	*Six to Ten Years*	*Eleven to Fifteen Years*	*Sixteen Or More Years*
	Coefficient (Robust Std. Errors)	*Coefficient (Robust Std. Errors)*	*Coefficient (Robust Std. Errors)*	*Coefficient (Robust Std. Errors)*
Appointment Variables				
Appointing President Preference (NOMINATE SCORE)	.3620*** (.100)	-.0269 (.079)	.1925* (.086)	.2616** (.093)
Same Party Senate Preference	-.3556* (.188)	.1379 (.171)	.6424** (.190)	.2082 (.173)
Home-State Political Elite	.0010 (.002)	-.0018 (.002)	.0001 (.002)	.0015 (.002)
Case-Contemporary Variables				
Supreme Court Liberalism Trend	.0003 (.004)	-.0095* (.004)	.0068 (.007)	-.0069 (.008)
Current President Liberalism	__	-.1377** (.054)	-.0203 (.048)	-.0592 (.061)
Federal Government's Position	.9350*** (.004)	.8860*** (.047)	.9619*** (.054)	.8933*** (.063)
Circuit Percentage Democratic	.6742* (.329)	1.562*** (.285)	1.322*** (.289)	1.307*** (.312)
Individual Judge Characteristics				
Race	.3054 (.212)	.0542 (.188)	.0622 (.138)	-.4094* (.1540)
Gender	.1450 (.127)	.0148 (.125)	.0100 (.162)	-.2428 (.253)
Age During the Case	-.0024 (.006)	.0073 (.005)	-.0036 (.006)	-.0106* (.006)
Constant	-.5733 (.391)	-.8812** (.3656)	-.9009* (.488)	.0380 (.532)
N	6558	7308	6008	4052
Number of Judges	261	259	252	159
Prob > chi(2)	0.000	0.000	0.000	0.000
Pseudo R-square	0.084	0.076	0.098	0.079
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)				

The predicted probabilities presented below in Table 5.19.b display again that in general all judicial cohorts appear more conservative when all cases are considered rather than considering non-consensus cases alone. Democratically appointed judges are somewhat more likely to support liberal outcomes than their Republican counterparts, although the differences again are not as large as in Table 5.12.b above, which considers only non-consensus cases. This is apparent by comparing the values between cells as well as by the smaller value for the standard deviations in Table 5.19.b and compared to the standard deviations in Table 5.12.b.

Table 5.19.b: Predicted Probabilities For All Cases, Using NOMINATE Scores, (Holding All Other Variables At Their Means)

PRESIDENT	LIKELIHOOD OF A LIBERAL VOTE			
	First Five Years	***Six to Ten Years***	***Eleven to Fifteen Years***	***Sixteen Or More Years***
Kennedy	43.19*	37.63	39.29*	38.24*
Johnson	43.32*	37.62	39.36*	38.33*
Nixon	34.14*	38.36	34.13*	31.39*
Ford	33.34*	38.30	34.55*	31.95*
Carter	45.02*	34.21	40.24*	39.51*
Reagan	32.97*	38.39	33.92*	31.13*
G.H.W. Bush	33.47*	38.35	34.20*	31.48*
Clinton	45.80*	37.44	40.64*	40.06*
Mean	38.91	37.56	37.04	35.26
Standard Deviation	5.87	1.42	3.07	4.08

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

Examining only social issues and using the president's social liberalism scores, as shown in Table 5.20.a, provides somewhat similar results when examining all social-issue cases as opposed to examining only non-consensus social-issue cases. Here we see that concordance between the president's policy preferences and the appointees' behaviors occurs during the early part of a judge's career, but does not occur later in the judge's career. The presidential

preference variable is positive and statistically significant in the first five years of a judges' career, but fails to achieve statistical significance in any other career period. This is consistent with Table 5.13.a above, which examines only non-consensus social-issue cases, except their policy concordance appeared to diminish after a judge serves ten years on the bench. Consistent with our theories about circuit court decision making, this supports the hypothesis that other factors, such as socialization or diminished loyalty to the appointing president may be occurring in cases involving social issues.

Again, in Table 5.20.a we see that the percentage of Democratic judges in a circuit has a strong effect on the judicial behaviors of individual judges. Even after controlling for other factors, as the percentage of Democratic judges increases in the circuits, the more likely a judge will support a liberal outcome. This appears true across all career periods, indicating that not only may individual appointees allow a president to exert some policy influence, but also influencing the partisan make-up of a circuit may also influence case outcomes and strengthens the importance of a president's ability to shape the partisan composition of the circuits.

Table 5.20.b displays the predicted probabilities of a liberal vote for each presidential cohort in all social-issue cases. Although clearly not as distinct as in the non-consensus cases in Table 5.13.b, we can see some differences among presidential appointees. Democratic presidential appointees are more likely to support liberal outcomes across the table. For example, a Johnson appointee will support a liberal outcome in just over thirty percent of their decisions in social-issue cases during their first five years on the bench. However, a Reagan appointee will support a liberal outcome only about twenty-one percent of the time in their social-issue cases early in their careers. Comparatively, this indicates that a Johnson appointee is

Table 5.20.a: Logistic Regression: Presidential Preferences and Judicial Voting, All Social Issue Cases (Non-Consensus & Consensus) from 1960-2001, Using Social Liberalism Scores and Multiple Career Periods.

Variable	*First Five Years*	*Six to Ten Years*	*Eleven to Fifteen Years*	*Sixteen Or More Years*
	Coefficient (Robust Std. Errors)	*Coefficient (Robust Std. Errors)*	*Coefficient (Robust Std. Errors)*	*Coefficient (Robust Std. Errors)*
Appointment Variables				
Appointing President Social Issues Preference	.0073* (.004)	.0030 (.003)	.0051 (.004)	.0078 (.005)
Same Party Senate Preference	-.3977 (.266)	.1494 (.220)	.7356** (.280)	.4813 (.310)
Home-State Political Elite	.0042 (.003)	-.0016 (.002)	.0044* (.003)	.0002 (.004)
Case-Contemporary Variables				
Supreme Court Social Issue Trend	-.0111* (.005)	-.0126** (.005)	.0201* (.011)	-.0208 (.014)
Current President Social Issue Preference	__	-.0030 (.002)	-.0005 (.002)	.0038 (.003)
Federal Government's Position	.8053*** (.082)	.7727*** (.082)	.7625*** (.088)	.7633*** (.106)
Circuit Percentage Democratic	1.502** (.527)	1.876*** (.378)	.9714** (.401)	1.714*** (.446)
Individual Judge Characteristics				
Race	.4624* (.236)	-.0269 (.218)	.0656 (.178)	-.5280** (.221)
Gender	.2775 (.173)	-.0264 (.165)	.2942 (.240)	-.0056 (.011)
Age During the Case	-.0022 (.008)	.0017 (.007)	.0043 (.009)	-.0056 (.011)
Constant	-1.133** (.528)	-.6870 (.455)	-2.385*** (.730)	-1.105 (.976)
N	3318	3898	3125	2097
Number of Judges	260	258	242	140
Prob > chi(2)	0.000	0.000	0.000	0.000
Pseudo R-square	0.053	0.056	0.066	0.064
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)				

forty-two percent more likely to support a liberal outcome than a Reagan appointee in the appointees' first five years on the court. These trends appear generally consistent across the other career periods, including judicial behaviors after a judge has served over sixteen years on the bench. In the final column of Table 5.20.b, we see that a Reagan appointee is almost half as likely to support a liberal outcome as compared to a Johnson appointee. These differences may represent a significant factor in case-outcomes, again, when we consider the thousands of cases that these appointees may decide over their careers. However, while we see a strong trend between the extremes, as expected the overall differences between the presidential cohorts appear smaller in all cases as compared to the non-consensus cases alone, as displayed by the smaller standard deviations in Table 5.20.b as compared to Table 5.13.b.

Table 5.20.b: Predicted Probabilities For All Social Issue Cases, Using Social Liberalism Scores (Holding All Other Variables At Their Means)

PRESIDENT	LIKELIHOOD OF A LIBERAL VOTE			
	First Five Years	***Six to Ten Years***	***Eleven to Fifteen Years***	***Sixteen Or More Years***
Kennedy	27.96*	28.83	27.82	27.34
Johnson	30.53*	29.90	29.60	30.06
Nixon	24.92*	27.53	25.67	24.14
Ford	24.17*	27.19	25.13	23.35
Carter	28.05*	28.87	27.88	27.43
Reagan	21.45*	25.95	23.14	20.51
G.H.W. Bush	23.32*	26.81	24.51	22.45
Clinton	28.79*	29.18	28.40	28.21
Mean	26.28	28.03	2.23	3.29
Standard Deviation	3.23	1.36	2.23	3.29

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

Lastly, Table 5.21.a displays the results for all economic-issue cases divided by four career periods. When examining these cases, we see the behaviors in economic cases are quite

Table 5.21.a: Logistic Regression: Presidential Preferences and Judicial Voting, All Economic Cases (Non-Consensus & Consensus) from 1960-2001, Using Economic Liberalism Scores and Multiple Career Periods.

Variable	*First Five Years*	*Six to Ten Years*	*Eleven to Fifteen Years*	*Sixteen Or More Years*
	Coefficient (Robust Std. Errors)	*Coefficient (Robust Std. Errors)*	*Coefficient (Robust Std. Errors)*	*Coefficient (Robust Std. Errors)*
Appointment Variables				
Appointing President Economic Preference	.0078** (.003)	.0058* (.003)	.0031 (.003)	.0006 (.004)
Same Party Senate Preference	-.1287 (.220)	-.1588 (.267)	.5545* (.241)	.2133 (.236)
Home-State Political Elite	-.0012 (.002)	-.0024 (.003)	-.0022 (.002)	-.0002 (.003)
Case-Contemporary Variables				
Supreme Court Economic Trend	.0074 (.005)	.0096* (.005)	.0092* (.005)	.0101 (.008)
Current President Economic Preference	__	-.0054* (.002)	-.0012 (.002)	-.0017 (.004)
Federal Government's Position	.6810*** (.065)	.7742*** (.065)	.8064*** (.080)	.7348*** (.102)
Circuit Percentage Democratic	.2400 (.331)	.6500*** (.444)	1.827*** (3.83)	.9787* (.450)
Individual Judge Characteristics				
Race	.2198 (.251)	.0185 (.225)	.2170 (.174)	-.1112 (.218)
Gender	.2093 (.150)	-.0551 (.163)	-.1057 (.222)	-.1214 (.278)
Age During the Case	-.0021 (.007)	.0103 (.006)	-.0127* (.008)	-.0276** (.008)
Constant	-.8542* (.482)	-1.510** (.509)	-.5458 (.620)	.9266 (.907)
N	3098	3192	2529	1566
Number of Judges	259	257	234	137
Prob > chi(2)	0.000	0.000	0.000	0.000
Pseudo R-square	0.048	0.053	0.075	0.055
Note: p ≤ .05 = *; p ≤ .01 = **; p ≤ .001 = *** (one-tailed)				

similar to the results for social issue cases. Again, policy concordance between the appointing president's preferences and judicial voting appears to occur early in the appointee's career, but it does not appear to occur after a judge has served ten years. This would support the idea that socialization, loss of a policy "cue," a change in ideology, or decreased loyalty to the appointing president may be occurring later in the judge's career. As in all the other tables examining consensus and non-consensus cases, the federal government's role in the cases is significant. throughout the judge's career. Further, the partisan composition of the circuits is again influential on individual judges' votes, particularly after the judge has served five years or more.

Table 5.21.b displays the predicted probabilities of a liberal vote for each presidential cohort in all economic issue cases. Unlike the probabilities of a liberal vote in social issue cases presented in Table 5.20.b, in Table 5.21.b we see that all judges appear more likely to support a liberal outcome in economic cases than they did in social cases. Part of this again may be due to

TABLE 5.21.b: Predicted Probabilities For All Economic Issue Cases, Using Economic Liberalism Scores (Holding All Other Variables At Their Means)

PRESIDENT	LIKELIHOOD OF A LIBERAL VOTE			
	First Five Years	***Six to Ten Years***	***Eleven to Fifteen Years***	***Sixteen Or More Years***
Kennedy	55.65*	52.83*	51.83	49.51
Johnson	58.09*	54.69*	52.82	49.70
Nixon	52.23*	50.25*	50.46	49.23
Ford	50.50*	48.95*	49.77	49.09
Carter	54.67*	52.09*	51.44	49.43
Reagan	46.39*	45.87*	48.13	48.76
G.H.W. Bush	49.39*	48.12*	49.33	49.00
Clinton	55.20*	52.50*	51.65	49.47
Mean	52.77	50.66	50.68	49.27
Standard Deviation	3.85	2.90	1.54	0.31

Note: * Indicates this variable was statistically significant in the model and these predicated probabilities were statistically significant at a 95% confidence interval determined by the delta method

the high number of appeals from criminal conviction, which are routinely affirmed and would represent a conservative vote in the social issue models. Even though all cohorts appear more likely to support liberal outcomes, there are some distinct differences between the cohorts. Democratic appointees are again more likely to support liberal outcomes than Republican appointees, overall. However, when comparing these differences to those differences found in non-consensus cases, we again see that all appointees appear more unified in their behaviors overall. When comparing the standard deviations from Table 5.21.b and Table 5.14.b (which only examines only non-consensus economic cases), we see much lower values in Table 5.21.b, suggesting less variation between the voting behaviors of appointees from varying administrations. The similarities in voting behaviors between presidential appointees appears even stronger over the judges' careers, as the predicted probabilities of a liberal vote are all within one-percentage point in column five of Table 5.21.b.

V.IX. Conclusions

This chapter examined the relationship between an appointing president's policy preferences and the behaviors of his judicial appointees. The findings in this chapter add an important facet to the discussion about a president's influence over the courts, especially at the circuit court level. While some demographic factors such as race and gender did not appear to be statistically significant, the liberalism of the appointing president is influential. This was shown by examining models that include votes cast by judges across all periods of their careers, such as in Tables 5.5a and 5.15a. However, after ten years or so on the bench, the results as to this relationship between presidential preferences and judicial behaviors becomes more suspect. Considering the massive number of cases that end at the circuit court level and never reach the

Supreme Court, measuring any long-term relationships between presidential preferences and judicial rulings is clearly meaningful and worthy of further study beyond this dissertation.

Some other interesting conclusions appear from the results. The lack of consistent statistical significance of the current president's liberalism and the current liberalism of the Supreme Court provides some evidence against a presumption that the U.S. Courts of Appeals judges decide cases with higher career goals in mind. These results generally support suppositions against any "promotional effects" in circuit court decision making. While there may be a theoretical basis to suggest a promotional effect exists, this analysis supports information from interviews (Cohen 2002) and other research (Baum 1997) arguing that judges do not consider promotion opportunities when deciding cases. These results also suggest that judges may not defer to current administrations nor consistently look to current presidents as cue-givers for policy decisions.

Further, building on Chapter IV, the partisan composition of the individual circuit courts appears to be a relatively stable influence on judicial behaviors. In most of the models and across several career periods, the percentage of Democratic judges on the circuit was positively related and statistically significant to the likelihood of a liberal vote. This indicates that, regardless of the appointing president, the race or gender of the judge, the judge's age, or the home state senator when senatorial courtesy is in play, the higher the percentage of Democratic judges sitting on the individual circuit, the more likely each individual judge within that circuit will support liberal outcomes. This may be due to the structure of the panels and the deference given to other panel members (Velona 2005) or the increased chance for socialization from Democratic judges (Wasby 1989) which could result in more liberal votes. While it is beyond the scope of this dissertation to determine the causation of this relationship, these findings

strongly underscore the importance of the president's ability to shape the partisan make-up of the circuits. Aside from the direct political gains from increasing one's party membership on the bench, these results suggest that altering the partisan composition of the court can further influence the behaviors of judges appointed by other presidents as well.

There are general limitations to these models that should be noted. First, while an important addition to the discipline and also used in countless studies, the Court of Appeals Database is a sample of a much bigger picture. While used by many scholars, this sample of judicial votes may not be illustrative of the entire universe of circuit court cases. Further, the measures of presidential policy preferences may not reflect the president's position on each issue. This dissertation attempted to use three different measures of presidential policy preferences to lessen this limitation. However, there still could be issues that are more important to certain presidents while those presidents are generally indifferent or hold an opposite view on other issues. For example, a president could support a liberal position on civil rights issues but also support a conservative position on criminal rights issues. These differences may not be reflected in the social liberalism scores or the NOMINATE scores.

Even given these limitations, this chapter provides important insights into the long-term policy impact that presidents may have through their appointees. While individual judges may differ from the appointing president's preferences for a number of reasons, the presented research suggests time may be an important factor in limiting a president's long-term inter-branch influence. While others have noted that "time is a variable that has no inherent meaning" (Kernell 1978, 508), in order to place a meaning on the cause of the changes over time we must first determine if that change exists. As mentioned above, after time on the bench the appointing president is out of office, so that he may no longer be a cue-giver, loyalties may have diminished,

and the judge has many years of experience and exposure to other judges in the circuit that may guide his or her decision. Therefore, the next step for future studies and research would be to determine the causality of the changes in this relationship between presidential preferences and judicial behaviors and, as is needed throughout the discipline, to further explore the changes in individual judicial ideology over the judges' and justices' careers.

CHAPTER VI

PRESIDENT CARTER'S CIRCUIT COURT APPOINTMENTS

This dissertation has examined three interrelated ways in which a president may be able to create a legacy through the courts of appeals and impact public policy: longevity of appointees' careers, changing the personnel composition of the courts, and appointing judges that vote in ideologically consistent ways with presidential preferences. While the analyses have examined judicial cohorts and examined voting records over a wide range of issues, still open is the possibility that certain presidential administrations may be more concerned with some specific policies or programs than others. Therefore, if presidents are successful in selecting appointees that share the administration's policy goals, we would expect that president's appointees to support those policies to a greater extent than other presidents' appointees. However, a decline in the ideological concordance may exist here, as well. Just as the analyses above suggest several factors could lead to judicial behaviors changing, the same issues may apply when we examine a specific issue area.

To examine the chance that presidents are successful in selecting appointees that will consistently support specific presidential policy goals, this chapter examines the appointees of President Jimmy Carter. First, this chapter will outline the general strategy and the limitations that presented themselves during the Carter Administration's appointment process. This information stems from prior studies and examination of the presidential papers at the Jimmy Carter Library in Atlanta, Georgia. Second, this chapter will examine the voting behavior of President Carter's circuit court appointees on an issue very important to the Carter Administration, civil rights.

VI.I. President Carter: Reforms and Realignment of the Federal Courts of Appeals

While President Carter did not make any appointments to the Supreme Court, by 1981 Carter had appointed almost forty-percent of the federal bench (Goldman 1997), including fifty-six appointments to the U.S. Courts of Appeals. These appellate appointments could have important policy implications as the circuit courts decide thousands of cases each year, collectively, set binding precedents within their circuits, and have the ability to shape national debates on key issues. Yet, even with a Democratic Congress, President Carter was not free to select anyone that he wished to the circuit courts. Just like any other president, Carter faced pressures and opposition from others who wanted to influence the appointment process. This section will briefly outline three key elements concerning the Carter nominations. First, a brief examination of the circuit court nominating commissions will be discussed. The second section will outline Carter's commitment to diversifying the federal bench and the possible limitations on those goals. Lastly, this section will examine the Omnibus Judgeship Act. Then, this section will examine the possible unintended consequences that resulted from Carter's reforms.

VI.I.I. Nominating Commissions

After running a campaign as a Washington, D.C., outsider, with anti-patronage rhetoric, and an overall pledge to remove corruption from the government (Goldman 1997), it is not surprising that Carter envisioned a new way of making judicial appointments. For decades, senators had been the key initiator in lower court appointments, partly because these are geographically tied and partly due to several presidents' lack of interest in lower court positions (Neff 1980-81; Slotnick 1980a). Carter pledge to appoint judges based on merit and in 1977 signed an Executive Order 11972 authorizing the creating of merit selection committees for the

circuit judgeships.[18] These commissions included reviewing committees within the circuits consisting of lawyers and non-lawyers as well as representative numbers of minorities and women. These committees would publicly announce circuit openings, receive and review applications, conduct interviews, and then send the approved names to the executive. The commissions were instructed to consider the applicants based on an appointee's good standing in at least one bar association, their reputation for good character, their sound health, their outstanding legal ability and commitment to equal justice under the law, their good judicial temperament, and if the applicants training, experience, expertise would meet the needs of the circuit.[19] A special charge was later made to the commissions to "make special efforts to seek out and identify well qualified women and members of minority groups as potential nominees."[20] While nominating committees had been used in some states (Neff 1980-81), this was a revolutionary idea for the federal bench. In some ways, the move to nominating commissions for the circuit courts displayed Carter's distrust of Congress (Jones 1999). While lacking the power to mandate merit selection commissions for district court positions, Carter strongly encouraged individual senators to establish such commissions within their own states to fill these lower court positions as well (Slotnick 1980b). While the nominating commissions did not last past his administration, Carter's nominating commissions were both a symbolic and practical movement away from 'politics as usual.'

VI.I.II. Diversifying the Bench

In the past three decades, much has been written about the Administration's attempts and success at diversifying the bench (see e.g. Lipshutz and Huron 1979). Studies have also

[18] "Judges, Circuit (US)," Box 9, Staff Offices: Domestic Policy Staff, Civil Rights and Justice – Malson," Jimmy Carter Library.
[19] *Id.*
[20] *Id.*

examined the voting trends of Carter's "non-traditional" appointments (see Gottshcall 1983; Walker & Barrow 1985). Adding to the interest was the Administration's openness about its plans to diversify the bench. In a breakfast meeting with reporters, President Carter commented:

> If I didn't have to get Senate confirmation of appointees, I could just tell you flatly that 12 percent of all my judicial appointees would be blacks, 3 percent would be Spanish-speaking and 40 percent would be women . . .[21]

This commitment to diversifying the bench was reflected in internal White House memos concerning several appointees. For example, a memo summarizing several circuit court nominations noted specifically about one possible nominee that "of course, being a woman would be given extra consideration."[22] However, some key advisors in the White House were quick to note that diversity may also assist in the reelection campaign, as appointing women and minorities may win votes for President Carter with these groups.[23] To foster these diversity goals, Carter openly stressed to the nominating committees the importance of considering minorities and women to fulfill circuit court vacancies[24] and pressured Senators to submit names of diverse individuals for district court openings. To coordinate efforts to diversify the bench, the Carter administration tried to send multiple nominees to the Senate at the same time in order to better assure achieving representative numbers of female and minority appointees.[25]

The Administrations goals sometimes resulted in conflicts with senators who attempted to assert their power, particularly over district court positions. One such conflict involved a very

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[21] Transcripted Statement by President Carter, 1/10/1979, "Judges, 09/1978-10/1980," Box 96, JC-1002, Lloyd Cutler Files, Jimmy Carter Library.
[22] Memo, Robert Lipshutz to Griffin Bell, Hamilton Jordan, and Frank Moore, 7/1/1977, "US Attorneys-Circuit Court Judges, 6/13/1977-7/24/1977," Box 140, Butler Files, Jimmy Carter Library.
[23] Memo, Sara Weddington and Louis Martin to President Carter, 1/11/1979, "Federal Judges [3]," Box 40, Louis Martin's Files, Jimmy Carter Library.
[24] Letter, President Carter to Joseph Tydings (nominating committee chair), 2/5/1979, "FG 52," Box FG-165, WHCF-Confidential File, Jimmy Carter Library.
[25] Memo, Hamilton Jordan, Robert Lipshutz, and Frank Moore to President Carter, no date listed, "Nominations." Box 9, JC DPS-Malson Files, Jimmy Carter Library.

public confrontation between the White House and Virginia Senator Harry Bird over Bird's list of all-white candidates for Virginia openings.[26] In response, Carter said publicly that he would not fill a position in Virginia without more diverse candidates.[27] Concerning the extension of merit selection commissions to the district courts, Texas Senator Lloyd Bentsen allegedly commented, "I am the merit commission for the state of Texas" (Slotnick 2002, 15). Attorney General Bell noted, "One senator said that if we insisted he have a commission, he would put his wife and three children on it, and that would be the commission" (American Enterprise Institute 1981, 20).

The Administration also received pressure from other sources besides the Senate. For example, one Ohio member of Congress strongly objected to nominee Nathaniel Jones because of Jones' work for the NAACP in school desegregation cases. In this member's words, Jones had cost "Cleveland and Ohio taxpayers millions of dollars in attorneys' fees and court costs" and that "Mr. Jones should be the last person in the world to be placed in a position where he could possibly decide appeals of school desegregation suits."[28] Other groups complained that the Administration was moving too slowly on fulfilling its diversity pledge.[29] Other pressures were more political in nature than diversity based. For example, one Representative from California urged Carter to appoint at least eight out of ten new Ninth Circuit judgeship positions to Californians based on geographical fairness. In this letter, the author warns anything less would

[26] Seaberry, Jane, "Bird Rejects Bid to Change Judge List," The Washington Post, 11/17/1978, Box 39, JC-1003, Louis Martin Files, Jimmy Carter Library

[27] Ted Gup. "Carter Balks on VA Judges." *Washington Post*, A1, A6, "Judgeships (Active) Miscellaneous," Box 29, Staff Offices Counsel (Lipshutz), Jimmy Carter Library.

[28] Letter, Ronald Mott (Representative-Ohio) to President Carter, 5/18/1979, "FG 52/#6 Ex.," Box FG-165, WHCF-Subject File, Jimmy Carter Library.

[29] Mailgram, National Women's Political Caucus to President Carter, 1/16/1980, "Judges 1-5/1980," Box 96, Staff Office Counsel (Cutler), Jimmy Carter Library.

"be received in my state with great dismay" by voters.[30] Others noted their tireless work for President Carter during the 1976 campaign and stressed that, due to this hard work, they "now strongly desire[d] to be included in the decision making process" for judicial openings.[31]

VI.I.III. The Omnibus Judgeship Act of 1978

A discussion of Carter's ability to diversify the federal bench must include the expansion of the active seats that occurred during the Carter years. As of 1977, the circuit courts had far fewer judges than today, with only 97 active judge positions and 53 judges still serving on senior status (www.fjc.gov). With over fifty percent less active status judge positions as today, each appointment would potentially have more influence than modern nominations. Yet due in part to perceived overcrowded court dockets and a new unified Democratic government, the creation of many new judgeships to the federal bench was expected in the beginning of 1977 (Barrow, Zuk, and Gryski 1996). The Omnibus Judicial Act of 1978 provided the Carter Administration with a unique opportunity to shape the lower federal courts, expanding the president's general ability to shape the courts through replacements alone (Goldman 1997, Slotnick 1980a; 2002). The new law established 152 new lower federal court judgeships, 117 new district court positions and thirty-five new circuit court seats.[32] Two controversial amendments threatened the bill early on: a provision to split the Fifth Circuit Court of Appeals and a requirement that the President employ strict guidelines to select appointees based on merit (Barrow, Zuk, and Gryski 1996). As to splitting the Fifth Circuit, some members of Congress and residents in the effected states worried that a circuit including only Georgia, Alabama, Mississippi, and Florida would be very

[30]Letter, Don Edwards (Representative-California), 1/18/1979, "FG 52/#8 A Ex.," Box FG-166, Jimmy Carter Library.
[31] Letter, Drew Rainer to President Carter, 2/6/1977, "Judicial Appointments," Box 48, Chief of Staff Files, Jimmy Carter Library.
[32] Memo, Hamilton Jordan, Robert Lipshutz, and Frank Moore for President Carter, 4/12/1978, "Nominations," Box 9, JC-DPS, Domestic Policy Staff Files, Jimmy Carter Library

dismissive of minority concerns based on the voting records of judges from those states (Barrow and Walker 1988). For example, the National Association for the Advancement of Colored People contacted the White House with a list of dozens of past cases that would have been decided against minorities or criminal rights if done under the proposed new circuit structure.[33] These and other concerns of residents created uneasiness within the White House (Barrow and Walker 1988) and the conference committee eventually left the provision out of the judgeship bill (Barrow, Zuk, and Gryski 1996). The requirement of merit selection, which the President had authorized in 1977, was included, but provided only voluntary provisions due to senator's concerns over their own abilities to recommend nominees from their home states (Barrow, Zuk, and Gryski 1996).

It cannot be overstated how important the creation of these new seats was to the diversity goals of the Carter Administration, as noted by his advisors in a memo to the President:

> The process of filling these judgeships provides an instrument to redress an injustice: of the 525 active Federal judges, only twenty are black or Hispanic and only six are women. By using the Omnibus Judgeship Act to appoint a substantial number of qualified minority and female lawyers, as well as capable white males, the Administration will begin to bring some balance into this area.[34]

President Carter mirrored such sentiments when signing the bill into law. As noted in Chapter IV, this bill was instrumental in allowing the Administration to achieve its diversity interests, but also in recomposing the circuit courts into a Democratic majority overall and creating Democratic majorities within eight of the eleven individual circuits.

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[33] Letter, Elaine Jones (NAACP Legal Defense Fund) for Doug Huron, 5/51978, "FG 52/#5," Box FG-165, WHCF-Executive File, Jimmy Carter Library.

[34] Memo, Hamilton Jordan, Robert Lipshutz, and Frank Moore for President Carter, 4/12/1978, "Nominations," Box 9, JC-DPS, Domestic Policy Staff Files, Jimmy Carter Library.

VI.I.IV. Unintended Consequences of Carter's Reforms

While President Carter's stated goals in reforming the judiciary included removing the politics of patronage and create a diverse judiciary, there were unintended consequences that occurred that possibly undermined the President's overall objectives. While Carter's institution of the merit selection committees successfully removed many of the patronage aspects of circuit court nominees and diminished the role of senatorial courtesy, it also shifted the balance of power over nominations in favor of the executive branch. The Administration largely controlled the processes of these commissions and largely removed the considerable discretion over nominations that home-state senators historically possessed. This, coupled with Carter's public statements concerning the policy goals of diversifying the federal bench, opened the door for the centralization of appointing power and the increase in policy-based appointments that occurred with President Ronald Reagan (Goldman 1997). As one scholar notes

> Once this genie of avowedly open policy considerations in judicial selection had been let out of the bottle, and once an increase in the White House's political role in judicial selection [occurred] . . . as it did during the Carter years, it would be very difficult to return to the old ways (Slotnick 2002, 15).

When President Reagan came to office in 1981, he discontinued the use of the merit selection commission, in part to distinguish his administration from his predecessor and also to centralize control over the selection of nominees (Goldman 1997). In place of the nominating commissions, the Reagan Administration created the Office of Legal Policy, which was responsible for conducting interviews and other research on potential nominees (Goldman 1997; Cannon 1991) and the President's Federal Judicial Selection Committee (Goldman 1997). While the Carter Administration's merit selection commissions successfully circumvented individual senator's power over appointments, President Reagan maintained this power shift by strengthening the direct role of the White House (Goldman 1997).

Carter's explicit goals of fostering certain policy through judicial appointments, namely affirmative action and supporting diversity, further paved the way for President Reagan to justify seeking his own policy goals through judicial nominations. Reagan sought nominees that would support conservative values in social and economic issues, in part reacting to the perceived liberalism of the Carter judges (Cannon 1991). In some sense, the goal of influencing policy through judicial nominations had been legitimized under the Carter Administration, justifying Reagan's screening of potential nominees based on their policy preferences as the new standard practice in judicial selection. In some sense, it would be hypocritical for liberal opponents to object to Reagan's policy-based appointments on the grounds of separation of power when many of the same critics supported Carter's use of appointments to achieve the policy goal of diversity. While President Carter's intended to remove the politics from judicial nominations, his reforms legitimized future presidents policy-based appointment strategies and may have exacerbated tensions between the executive and legislative branches over these nominees. These tensions, an unintended consequence of the Carter reforms, have continually increased in recent administrations, culminating with intense political battles over circuit court nominations during the Clinton and George W. Bush Administrations (Slotnick 2002). In a twist of irony, Carter's reforms, while seeking to remove the politically driven patronage system from judicial selection, increased the political considerations for each nominee rather than remove the 'politics as usual' from the process.

VI.II. Carter's Appointees and Civil Rights Claims

As outlined in Chapter IV, while initially successful, President Carter's attempts to tilt the partisan and ideological balance of the circuit courts' personnel did not last past the next eight years. However, as outlined in Chapter III, the Carter Administration appears more

successful in selecting judges with career longevity, at least as compared to other contemporary presidents. Nevertheless, having appointees serve for long periods would not grant the president the ability to shape policy through the courts if those appointees behave in ways inconsistent with the president's policy goals. Similarly, if those appointees were inconsistent in their behaviors over their careers, the president's policy goals could be undermined. Studies have indicated that groups of appointees selected by presidents often vote as a cohesive unit, and, if voting together, can foster a president's policy goals (Lindquist, Yalof, and Clark 2000). However, as Segal, Timpone, and Howard (2000) indicate, judges' behaviors and their concordance with the nominating president's goals may not be constant over a judge or justice's careers. Similarly, the analyses presented in Chapter V suggest that policy concordance between presidential preferences and appointees voting behaviors is not necessarily consistent across time. Therefore, to determine if a president may have policy influence through judicial appointments, it may be necessary to look at particular issue areas of concern to the administration and examine judicial voting in those particular areas.

As for President Carter's appointees, past studies have shown that Carter's judges may behave differently from judges appointed by other presidents. For example, President Carter's appointees were found to be much more likely to support criminal defendant rights than were President Reagan's appointees (Rowland, Songer, and Carp 1988) and are more likely to grant standing to parties attempting to sue corporations or government defendants (Rowland and Todd 1991). Some differences have also been found between Carter's "traditional judges" (white males) and his "non-traditional judges" (females and minorities), although the quality of the decisions did not vary by race or gender (Walker and Barrow 1985). Gottschall's (1983) analysis of Carter appointees in the courts of appeals found African-American male judges more

likely to vote in the liberal direction than their white male counterparts in criminal appeals cases. However, other studies, including Carter appointees, find little differences based on individual characteristics and judicial behaviors (Davis 1991; Scherer 2005).

Tables 6.1 and 6.2 examine a sample of the votes of President Carter's appointees and the voting records of contemporary presidential cohorts. The data for these tables again stem from the Court of Appeals Database, which includes a random sample of cases from each circuit for each year (Songer 1997). Votes were examined from these cases to arrive at overall voting trends and the likelihood of supporting "liberal" outcomes.[35] Again to avoid routine cases where judges may lack the opportunity to use their discretion, this research uses only non-consensus cases, or those cases with a dissenting opinion and/or a reversal of the trial court's decision (Scherer 2005; 2001; Songer, Sheehan, and Haire 2000).

Table 6.1 redisplays the results in Table 5.3, above, which indicates the aggregate support for "liberal" outcomes from presidential appointees. The data included only those cases that involve social issues such as criminal cases, privacy issues, civil liberties, and civil rights as these issues are often presumed to be the most clearly defined in terms of ideology and attitudes (Scherer 2005; 2001). Again, looking at the variance across the judges' careers provides some insight into a president's ability to select nominees that will make consistent decisions over their time on the bench. Columns two through six display this overall support for liberal outcomes. The number in parentheses displays the ranking, where one (1) is the judicial cohort with the

[35] For the purposes of this study in examining a president's legacy in the courts, we are concerned with the consistency of their appointees' behaviors. As in the previous chapters, dissertation does not attempt to make normative judgments about whether those behaviors are desirable or the proper decisions to be made. Here, we are merely looking at uniformity of the appointees' behaviors across their careers.

highest percentage of support for liberal outcomes. President Carter's appointees appear to become more conservative over their careers, as they support the liberal outcomes just over seventy-two percent of the time in the first four years of their careers, but just under fifty-seven percent after the judge has been on the court for sixteen years. However, this is not unusual when looking across Table 6.1, as all cohorts show some variations and generally become more conservative in the later periods of their careers. Only appointees from Presidents Reagan and Ford are slightly more liberal after serving sixteen on the bench.

Table 6.1: Liberal Voting Percentages of Presidential Cohorts in Social Issue Cases, Non-consensus Cases (Ranking in Parentheses)

President	Percentage of Liberal Votes Throughout the Judge's Career	First 4 Years of Judges' Career	Years 5 to 10 of Judges' Career	Years 11 to 15 of Judges' Career	Over 16 years of Judges' Career	Average Change Between Periods (absolute value)
Kennedy	75.20 (1)	81.90 (1)	71.93 (2)	73.17 (1)	71.43 (2)	**4.32**
Johnson	72.64 (2)	77.44 (2)	73.95 (1)	63.81 (3)	74.07 (1)	**7.96**
Nixon	53.37 (5)	58.61 (5)	57.92 (5)	46.67 (6)	40.65 (6)	**6.11**
Ford	49.78 (7)	52.86 (6)	53.57 (6)	48.94 (4)	42.86 (5) 5.13	**3.80**
Carter	66.70 (3)	72.20 (3)	66.67 (3)	65.42 (2)	56.80 (4)	**5.13**
Reagan	51.45 (6)	50.64 (7)	53.14 (7)	48.70 (5)	59.46 (3)	**5.90**
G.H.W. Bush	42.00 (8)	44.77 (8)	39.10 (8)	35.71 (7)	--	**4.53**

For our purposes, column seven may be the most influential. This column displays the average change per presidential cohort as the career periods change. If a president is successful in selecting judges that behave consistently over time, we would expect the values in this column

to be low. An examination of column six reveals that President Carter's appointees were in the middle as for their consistency across careers periods. President Ford's cohort has the lowest variance across the career periods with an average change of 3.8 percentage points from one career period to the next. President Johnson's judges appear the most inconsistent, as the average support for a liberal outcome varies by nearly nine percentage points, largely due to the drop in years eleven to fifteen. President Carter's appointees appear fairly consistent with a variance of just over five percentage points across career periods. However, examining the difference in career period one (the first four years of a judge's career) and career period four (sixteen years or more) does show a large difference for the Carter cohort.

For Table 6.2, a similar analysis is conducted but here we examine individual votes in only those cases in the Court of Appeals Database that involve issues of civil rights. As civil rights was a key issue in the Carter administration, with President Carter stressing an affirmative action policy in judicial selection (Goldman 1997; Slotnick 1979), we would expect, if successful in selecting like-minded jurists, that the Carter appointees would strongly support civil rights claims consistently over time. Again, however, many routine cases in the courts of appeals may not allow a judge to use her or his discretion in cases, so again Table 6.2 is limited to those votes in non-consensus cases.

Columns two through six display the likelihood of support for a civil rights claimant in the courts of appeals divided by appointing president and career period. The values in parentheses display the number of votes within each cell. The last row in the table displays the significance levels for each column. As we can see from the likelihoods, President Carter's circuit court appointees generally support civil rights claims about sixty-seven percent of the time. This is the third highest support overall, slightly behind President Johnson's appointees at

seventy-eight percent and President Kennedy's appointees at seventy-two percent. The Carter cohort's support for civil rights claims was nearly ten percentage points higher overall than that of the Republican presidential cohorts.

Table 6.2: Appointees' Likelihood of Support For Civil Rights Claims in Non-consensus Cases Over Time (Number Votes in Parentheses)

	Over The Judges' Career		First 4 Years Of Appointee's Career	Years 5 to 10 Of Appointee's Career	Years 11 to 15 Of Appointee's Career Years 11-15	After 16 on the Bench		Average Change Between Career Periods
Kennedy	72% (375)		81% (116)	63% (114)	79% (82)	67% (63)		15.3
Johnson	78% (903)		58% (266)	84% (238)	65% (210)	87% (189)		22.3
Nixon	58% (832)		72% (302)	59% (240)	51% (167)	41% (123)		10.3
Ford	54% (329)		53% (70)	55% (56)	67% (147)	44% (56)		12.3
Carter	67% (958)		77% (295)	65% (243)	65% (295)	49% (125)		9.3
Reagan[36]	53% (931)		51% (314)	52% (350)	54% (230)	——		1.5
Chi2 (Sig.)	66.1 (0.00)***		33.5 (0.00)***	32.1 (0.00)***	11.3 (0.07)*	29.3 (0.00)***		

Note: Number in parentheses display the number of judicial votes in each cell;
* p<.10 ** p<.05 *** p<.01

While the Carter appointments do not appear to be the most supportive of civil rights claims, they do appear to be the most consistent from one career period to the next. Column seven of Table 6.2 displays the average change between the likelihood of supporting civil rights claimants between each career period. Here we see that the Carter appointees are the most consistent, varying by about nine percentage points between each career period. This is the

[36] Given the years included in the database, President Reagan has not been out of office long enough to assess his nominee's voting behaviors for sixteen years or more.

lowest percentage of change among any of the presidential cohorts, except for President Reagan who had very few appointees that cast votes after being on the bench for sixteen or more years within the database. Given that our goal is looking for consistency in judicial behaviors, it appears that the Carter judges are relatively constant in their likelihood of supporting civil rights claims and their support for the liberal position overall as displayed in Table 6.1. However, again, there is a large variation between the likelihood of a liberal vote by Carter judges after sixteen years on the bench and the likelihood early in their careers. The values for President Carter's cohort in column five are also lower than expected when compared to the other Democratically appointed judges. Therefore, while more consistent in between individual career periods, examination of the long-term stability of the Carter judges' behaviors produces somewhat mixed results.

VI.III. Conclusions

Examining the possible long-term influence of the Carter Administration in the courts allows us to make some clear conclusions. Although not the focus of this research project, there can be no doubt that diversity was a key element in the nomination strategy of the Carter Administration and indeed a lasting legacy. The Carter Administration was successful in diversifying several courts that had never had a minority or female on the bench (Goldman 1997). However, Carter's goals of removing politics from judicial selection and moving to merit selection may have increased, rather than decreased, the political nature of the process by allowing future administrations to centralize the process within the White House and increasing tensions between the Senate and the Executive Branches. As noted in Chapter III, the Administration also appears very successful in selecting judges that remained on the court for long periods of time. Carter was initially successful in influencing the partisan composition of

the circuits, as displayed in Chapter IV, although these gains for the Democratic Party in judicial positions were only temporary. However, undermining the success of selecting candidates with long careers is the somewhat inconsistent voting records of those appointees as shown through Table 6.2.

Although more consistent than any other presidential cohort on the issue of civil rights except for possibly President Reagan, there are still large differences in the percentage of support in civil rights cases particularly between the first four years of a judge's career and those votes cast after sixteen years or more on the bench. Part of the inconsistency in voting may be due to the process initiated by President Carter himself. Carter attempted to insulate the appointment process from politics with the creation of the merit selection committees (Goldman 1997). This, as with many of the policy-making decisions, was an attempt to do what was believed to be in the best interests of the nation without thinking about the political consequences (Jones 1999). This meant that political loyalists, those that would predictably support Carter's aims, would not necessarily be selected for each judicial position, although there were reports that some selection committees did ask potential nominees about their values and views on certain topics (Berkson 1979). Removing some of the political controls on nominees increased the chances of selecting judges who may behave in ways that go against the president or were inconsistent over time. In contrast, President Reagan, who abolished the merit selection committees and created a system with tight controls over nominees based on ideology (Goldman 1997), appears to have a group of appointees that decide cases in very consistent ways, as displayed in Tables 6.1 and 6.2. Perhaps with tighter controls over the nomination process, the Carter Administration could have selected judges with more unified and consistent behaviors. However, adding more political controls

over the process would have been exactly what the President, himself, did not want and would have gone against many of his 1976 campaign promises of reform.

Even though the measures used in this project present mixed results as to the Carter Administration's judicial legacy, it cannot be denied that several noteworthy changes did occur. Scholars, judges, and other researchers have lauded the virtues of having a diverse bench. Likewise, the innovative attempt to bring a merit selection system to the federal courts, alone, is noteworthy, even if it has not been replicated by subsequent administrations. These commissions were a symbolic undertaking that represented much of the Carter Administration's attempts to remove the perceived political corruption of a dishonest system in Washington, D.C. Regardless of what measures may be used, reforms and innovations attempted by the Carter Administration are worthy of further study and understanding as well as worthy examples of creative reforms for future presidential administrations to emulate as well as establish Carter's influence over the courts.

CHAPTER VII

CONCLUSIONS, LIMITATIONS, AND FURTHER RESEARCH

In the Ninth Circuit's *Newdow* decision, discussed at the beginning of the dissertation, Judge Alfred Goodwin, a Nixon appointee, wrote the majority opinion finding that the *Pledge of Allegiance* as conducted by a public school violated the First Amendment to the Constitution. Goodwin had served in the Ninth Circuit for over thirty years. Judge Ferdinand Fernandez, an appointee of George H.W. Bush, dissented, and advocated that the panel should find no constitutional violations, as he noted that any burden on First Amendment freedoms to be "picayune at most."[37] Fernandez was a more recent appointee to the court, serving in his thirteenth year. While both Republican appointees, the two jurists came to very different conclusions about the two-word phrase uttered by schoolchildren. Clearly, it would be far too presumptuous to draw any conclusions from this one case and these two judges. Several reasons could exist for the unexpected voting of Judge Godwin, including the possibility that the Nixon Administration incorrectly assessed his ideology during his appointment. However, this example follows the patterns generally supported from the models in Chapter V, with Judge Goodwin, being decades removed from the appointment process, promoting a more liberal position than would be presumed from who appointed him to the bench.

To assess the true impact of presidential appointments, this dissertation examined several different aspects of the appointment process and judicial voting behaviors. Chapter Two began by examining the prior research in this area and noted that a key limitation involves the lack of

[37] *Newdow v. United States Congress*, 328 F.3d at 490 (9th Cir. 2003).

studies devoted to analyzing the presidents' long term influence. To begin to fill this gap in our research, Chapter III first examined the age of judicial appointees from Presidents Franklin Roosevelt to George W. Bush. Then the Chapter examined the longevity of appointees from Franklin Roosevelt to President Clinton. The data on career longevity appear to support Goldman's (1997) findings, as those administrations that considered age during the nomination process appear generally more successful in selecting appointees that remain on the court for longer periods. However, the differences were not as dramatic as one might expect and some administrations that did not specifically consider age appear as successful as other administrations that included an appointee's age in their selection process. One clear trend, however, is that recent administrations do appear more successful in selecting judges that remain on the court for longer periods. This trend supports the suggestion that recent administrations have strongly moved to the policy agenda (Goldman 1997; Scherer 2005) and, as a result, specifically select appointees that will have a stronger policy impact by remaining on the court for longer periods.

Chapter IV examined a president's ability to shape the partisan compositions of the circuits in order to assess a president's ability to influence the partisan make-up of the three-judge panels and *en banc* hearings. The findings reported in Chapter IV suggest that presidents are indeed able to influence the partisan make-up of the circuits, although there are several factors that will influence this ability. Congress may help presidents through the creation of new judicial positions, such as Presidents Carter and Reagan who were able to appoint a large number of judges to new seats. However, Congress does not always assist the president in stacking the judiciary as they may go through an entire president's tenure without adding seats to the federal courts of appeals, such as with the Ford and Wilson Administrations and as will most likely be

the case for George W. Bush. Examining judicial turnover among the active status seats in the circuit courts, Chapter IV noted that presidents between Roosevelt and George W. Bush have been able to flip the partisan majority of the circuit courts, as a whole, six times. Within the circuits, presidents have been able to create new partisan majorities in the individual circuits forty-one times since 1933. This means a president will generally be able to shift the partisan majority of about two individual circuits per four-year term in office. Only Presidents Roosevelt and Eisenhower were able to appoint a majority of their own appointees to the circuit bench as a whole. However, the presidents collectively have been able to appoint their own majorities to the individual circuits thirty-eight times since 1933. This means a president will generally be able to appoint a majority of their own appointees to two circuits per four-year term in office. While these presidential majorities could influence many cases, their tenure is short lived, lasting on average about six years after the president leaves office.

However, selecting judges that remain on the court for long periods and being able to shape the personnel composition may provide only limited policy influence if the appointees' behaviors are incompatible with presidential policy goals. Therefore, Chapter V examined the long-term voting behaviors of judicial appointees and their relationship to presidential policy preferences. Using logistic regression analysis and data from the Court of Appeals Database (Songer 1997), Chapter V found that judicial appointees behaviors are, in general, ideologically consistent with presidential policy preferences. However, this consistency is not constant over time, suggesting a limitation on a president's long-term policy influence through the courts. The results indicate a judge will vote in ideologically consistent ways with the appointing president's policy goals for the first decade of the judges' careers, but this relationship is not as clear after a judge has served more than a decade on the bench. Chapter V also reinforces the findings

concerning personnel composition examined in Chapter IV. Not only may shaping the partisan composition be an influencing factor in its own right by influencing who decides the cases, the results concerning circuit composition also appear to exert an influence on individual judges, regardless of the appointing president. This facet can be seen through many of the models presented in Chapter V, which showed that as the percentage of Democratically appointed judges increase in a circuit, the individual judges within that circuit are more likely to support liberal outcomes.

Finally, the dissertation examined the president's potential impact on a specific issue area as I examined the Carter Administration's nomination strategies and a sample of the specific voting records of the Carter circuit judges on civil rights issues. Using the papers from the Carter Presidential Library, Chapter VI examined the influences on several of the Carter appointments, including the creating of the circuit nominating committees, Carter's emphasis on diversity, and outside influences such as pressure from senators, party members, and interest groups. In examining the voting behavior of President Carter's circuit court appointees on civil rights issues, Chapter VI shows that Carter's appointees were highly consistent when deciding civil rights issues as compared to other presidential cohorts. While there were fluctuations within the Carter judges, these initial findings suggest that presidents may have more long-term influence over certain issues important to the administration.

While the analyses presented above show that the president possesses the opportunity to influence public policy through his judicial appointees, this influence may not be long lasting. The president's influence will generally fall far short of White House staff member Tom Charles Huston's assessment that lower level judicial appointments grant the president the ability to influence national affairs "for a quarter of a century after he leaves office" (Goldman 1997, 205-

206). For example, presidents are generally able to appoint a majority of their own appointees to two circuits per four-year term, thus providing great influence within those circuits. However, these circuit majorities generally last only about six years. Likewise, almost all presidents since Roosevelt that have had the opportunity to change the partisan majority on the circuit bench were able to do so. While many presidents appoint judges that serve long periods, as noted in Chapter III, those appointees voting behaviors do not consistently mirror the appointing president's policy preferences over time. Given the models in Chapter V and the intervening influence of future administrations described above, a better estimate from the analyses presented here suggests that opportunity to shape public policy through their appointments lasts approximately ten years after the president leaves office. While possibly not as long a term as others suggest, or as long as presidents would hope for, this ten-year period could represent thousands of cases, many of which could be of major significance. The fact that presidents may be limited in some respects does not also preclude the possibility that individual appointments may decide some of the most significant cases many years after the president has left office. Further, some presidents will be more successful than others, often due to outside factors such as the willingness of Congress to create new judicial positions, a president's ability to win reelection, and the normal cycle of turnover for judicial seats. While this ten-year period of influence is clearly not a hard and fast rule, it appears a safe overall assessment considering each presidential administration since 1933.

As outlined above, there are limitations to the findings presented in this dissertation and further research that needs to be done. For example, while Chapter III suggests which presidents were more successful in selecting judges that remained on the courts for longer periods, this dissertation is not able to provide an exact count for how many more case votes these extra years

may involve or if the extra years include cases of high policy importance. These values would depend on each circuit's case load and the types of cases heard within the circuits. While it may be a safe presumption that longer careers would entail more policy impact, Chapter III merely allows us to examine the possibility of influence, not necessarily the influence itself. Similarly with the analysis in Chapter IV, examining circuit court personnel, again, appointing a majority of one's own appointees to the circuits would most likely increase a president's policy influence, but the current analysis allows us to examine only the opportunity presidents may have. Individual case analyses may be required to assess the true policy impact. As noted in Chapter V, the logistic regression models are based on samples of judicial votes that, although randomly chosen, may not be representative of a judge's overall behaviors. In addition, limitations may exist with our presidential policy preferences as mentioned above. Further, while the goal of this dissertation was to determine if policy concordance exists and, if so, whether it is consistent over an appointee's career, this dissertation is not able to determine the cause for this inconsistency. While cue theory, socialization, changing political environment, or other personal changes in a judge's ideology may suggest several possibilities, it is beyond the scope of this current analysis to assess the reasons for this inconsistency.

Along with assessing causation in Chapter V, future studies and models may further our knowledge by including more control variables to examine policy concordance. For example, some have suggested that divided government may have a limiting effect on a president's ability to appoint ideologically compatible judges (Goldman 1997). While recent empirical studies have not supported this trend (Scherer 2001), future models could also examine the influence of the senate and divided government on policy concordance. The president's ability to appoint the preferred nominee may also be hindered by the election cycle or the president's "lame-duck"

status. For example, confirmation rates have been found to be longer later in a president's term (Garland 1996) and nominations are more likely to fail during election years (Hartley and Holmes 2002). Therefore, further controls for the election cycle and presidential term may be included in future studies. Lastly, the possibility exists that judges on senior status may behave differently than their colleagues or perhaps that they may vote differently that they did when they were on active status. Therefore, a further examination of behaviors for circuit court judges on senior status may also be insightful.

Building on Chapter VI, a more detailed analysis of individual voting records on particular presidents and their appointees may allow a more refined analysis of the policy impact and the ideological concordance between presidential policy preferences on specific issues and their appointees' behaviors. For example, while Goldman (1997, 360) finds little evidence of the Carter Administration attempting to foster a policy agenda through their appointees, further research conducted at the Carter Presidential Library suggests that policy implications may have been a consideration with at least two nominations. Ruth Bader Ginsburg had been a strong advocate for women's privacy rights, including arguing cases before the Supreme Court. Several members of the Carter Staff informed the President of her credentials and her extensive work on issues involving women's rights.[38] President Carter was also made aware of these facts by many interest groups that lobbied heavily for her nomination.[39] Similarly, Nathaniel Jones was a prominent African-American attorney who had worked for the N.A.A.C.P. on several civil rights cases, such as school desegregation. While these two nominations, a woman and an African-American, indeed would help Carter gain political support among these groups, these appointees

[38]Memo, Lloyd Cutler to President Carter, 12/12/1979, "Judges 5/78-12/79," Box 96, Staff Office Counsel (Cutler), Jimmy Carter Library.
[39] Mailgram, National Women's Political Caucus to President Carter, 1/16/1980, "Judges 1-5/1980," Box 96, Staff Office Counsel (Cutler), Jimmy Carter Library

also appear to foster a policy agenda as their past professional activities appeared an important aspect in their receiving nominations. A study of Ginsburg's circuit court voting record in the area of women's rights and Jones' voting record on civil rights issues could further our understanding of the impact of particular appointees and specific issues. While there were too few cases in the Court of Appeals Database to conduct these types of studies, an analysis of their impact on these issues using WESTLAW or LEXIS/NEXIS could provide valuable insight and further our understanding of a president's long-term policy influence through circuit court nominations.

The inconsistency or loss of ideological concordance presented in Chapter V and the other limitations on presidential appointments raises at least two much larger theoretical issues for future research. First, as Segal, Timpone, and Howard (2000) suggest in their Supreme Court analysis, this may raise concerns or at least call into question more issues about the counter-majoritarian nature of unelected, life-tenured judges making influential policy decisions. Second, the results in Chapter V may raise the possibility for a need to reconstruct our measures of judicial ideology. If the discipline uses the president's ideology as a proxy for the judge's ideology, either as a control or as the main independent variable, there may be problems with our models. While the president's ideology is a good static measure and has been shown to be a good predictor, it nevertheless may be insufficient as a judge's political preferences may change over time. Thus, as with all research, the results in this dissertation should encourage further research to better refine our models and examine better measures of important concepts.

The purpose of this study was to provide a better understanding of the president's influence of the judiciary and about circuit court behaviors. While it appears the president has considerable opportunities to influence policy through nominations, those opportunities are

limited by many outside factors and may, in fact, only last a decade or so after the president leaves office. However, even if this influence only lasts ten years, these are ten years when the president has officially withdrawn from all other executive powers. While the statutes a president is able to get through Congress and the bureaucratic changes a president may employ are subject to the whims of future elected officials, a president's judicial nominations will remain. Yet, if these appointees do not support the president's policy agenda or their behavior is inconsistent overtime, such as after the ten-year period, then perhaps the president's power is more limited.

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APPENDIX A

TIMELINE EXAMPLE DEPICTING CHANGES IN THE FIRST CIRCUIT COURT OF APPEALS

Year: 1932-1939						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	George Bingham	Dem	1913	Wilson	1939	--
2	Wilson, Scott	Rep	1929	Hoover	1940	--
3	James Morton	Rep	1932	Hoover	1939	--

Year: 1939-1940						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1*	Calvert Magruder	Dem	1939	FDR	1959	Wilson
2	Wilson, Scott	Rep	1929	Hoover	1940	--
3	James Morton	Rep	1932	Hoover	1939	--

Year: 1940-1941						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Calvert Magruder	Dem	1939	FDR	1959	Wilson
02	Wilson, Scott	Rep	1929	Hoover	1940	--
3*	John Mahoney	Dem	1940	FDR	1950	Hoover

Year: 1941-1951						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Calvert Magruder	Dem	1939	FDR	1959	Wilson
2*	Peter Woodbury	Dem	1940	FDR	1964	Hoover
3	John Mahoney	Dem	1940	FDR	1950	Hoover

Year: 1951-1959						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Calvert Magruder	Dem	1939	FDR	1959	Wilson
2	Peter Woodbury	Dem	1940	FDR	1964	Hoover
3*	John Hartigan	Dem	1951	Truman	1965	FDR

Year: 1959-1965						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Bailey Aldrich	Rep	1959	Eisenhower	1972	FDR
2	Peter Woodbury	Dem	1940	FDR	1964	Hoover
3	John Hartigan	Dem	1951	Truman	1965	FDR

Year: 1965-1972						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Bailey Aldrich	Rep	1959	Eisenhower	1972	FDR
2*	Edward McEntee	Dem	1965	LBJ	1976	FDR
3	Frank Coffin	Dem	1965	LBJ	1989	Truman

Year: 1972-1976						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1*	Levin Campbell	Rep	1972	Nixon	1992	FDR
2	Edward McEntee	Dem	1965	LBJ	1976	FDR
3	Frank Coffin	Dem	1965	LBJ	1989	Truman

Year: 1977-1980						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Levin Campbell	Rep	1972	Nixon	1992	FDR
2*	Hugh Bownes	Dem	1977	Carter	1990	FDR
3	Frank Coffin	Dem	1965	LBJ	1989	Truman

Year: 1980-1984						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Levin Campbell	Rep	1972	Nixon	1992	FDR
2	Hugh Bownes	Dem	1977	Carter	1990	FDR
3	Frank Coffin	Dem	1965	LBJ	1989	Truman
4*	Stephen Breyer	Dem	1980	Carter	1994	New seat

Year: 1984-1986						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Levin Campbell	Rep	1972	Nixon	1992	FDR
2	Hugh Bownes	Dem	1977	Carter	1990	FDR
3	Frank Coffin	Dem	1965	LBJ	1989	Truman
4	Stephen Breyer	Dem	1980	Carter	1994	New seat
5*	Juan Torruella del Villa	Rep	1986	Reagan		New Seat

Year: 1986-1988						
Seat	**Name**	**Party**	**Appointment year**	**Pres**	**Year Left**	**Previous Appointing President**
1	Levin Campbell	Rep	1972	Nixon	1992	FDR
2	Hugh Bownes	Dem	1977	Carter	1990	FDR
3	Frank Coffin	Dem	1965	LBJ	1989	Truman
4	Stephen Breyer	Dem	1980	Carter	1994	New seat
5	Juan Torruella del Villa	Rep	1984	Reagan		New Seat
6*	Bruce M. Selya	Rep	1986	Reagan	2006	New seat

Year: 1989-1990						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Levin Campbell	Rep	1972	Nixon	1992	FDR
2	Hugh Bownes	Dem	1977	Carter	1990	FDR
3*	Conrad Cyr	Rep	1989	Bush I	1997	LBJ
4	Stephen Breyer	Dem	1980	Carter	1994	New seat
5	Juan Torruella del Villa	Rep	1984	Reagan		New Seat
6	Bruce M. Selya	Rep	1986	Reagan	2006	New seat

Year: 1990-1992						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Levin Campbell	Rep	1972	Nixon	1992	FDR
2*	David Souter	Rep	1990	Bush I	1990	Carter
3	Conrad Cyr	Rep	1989	Bush I	1997	LBJ
4	Stephen Breyer	Dem	1980	Carter	1994	New seat
5	Juan Torruella del Villa	Rep	1984	Reagan		New Seat
6	Bruce M. Selya	Rep	1986	Reagan	2006	New seat

Year: 1992-1995						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1*	Michael Boudin	Ind	1992	Bush I		Nixon
2*	Norman Stahl	Rep	1992	Bush I	2001	Bush I
3	Conrad Cyr	Rep	1989	Bush I	1997	LBJ
4	Stephen Breyer	Dem	1980	Carter	1994	New seat
5	Juan Torruella del Villa	Rep	1984	Reagan		New Seat
6	Bruce M. Selya	Rep	1986	Reagan	2006	New seat

Year: 1995-1998						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Michael Boudin	Ind	1992	Bush I		Nixon
2	Norman Stahl	Rep	1992	Bush I	2001	Bush I
3	Conrad Cyr	Rep	1989	Bush I	1997	LBJ
4*	Sandra Lynch	Rep	1995	Clinton		Carter
5	Juan Torruella del Villa	Rep	1984	Reagan		New Seat
6	Bruce M. Selya	Rep	1986	Reagan	2006	New seat

Year: 1998-2002						
Seat	**Name**	**Party**	**Appointment year**	**Appointing President**	**Year Left**	**Previous Appointing President**
1	Michael Boudin	Ind	1992	Bush I		Nixon
2	Norman Stahl	Rep	1992	Bush I	2001	Bush I
3	Kermit Lipze	Dem	1998	Clinton		Bush I
4	Sandra Lynch	Rep	1995	Clinton		Carter
5	Juan Torruella del Villa	Rep	1984	Reagan		New Seat
6	Bruce M. Selya	Rep	1986	Reagan	2006	New seat

Year: 2002-2006						
Seat	**Name**	**Party**	**Appointment year**	**Pres**	**Year Left**	**Previous Appointing President**
1	Michael Boudin	Ind	1992	Bush I		Nixon
2	Jeffrey Howard	Rep	2002	Bush II		Bush II
3	Kermit Lipez	Dem	1998	Clinton		Bush I
4	Sandra Lynch	Rep	1995	Clinton		Carter
5	Juan Torruella del Villa	Rep	1984	Reagan		New Seat
6	Bruce M. Selya	Rep	1986	Reagan	2006	Reagan

Year: 2007 start						
Seat	**Name**	**Party**	**Appointment year**	**Pres**	**Year Left**	**Previous Appointing President**
1	Michael Boudin	Ind	1992	Bush I		Nixon
2	Jeffrey Howard	Rep	2002	Bush II		Bush II
3	Kermit Lipez	Dem	1998	Clinton		Bush I
4	Sandra Lynch	Rep	1995	Clinton		Carter
5	Juan Torruella del Villa	Rep	1984	Reagan		New Seat
6 *	Open Seat					Reagan
Note: * indicates the seat change for that particular table						

APPENDIX B

LISTING OF CASE TYPES USED CHAPTER 5 LOGISTIC REGRESSION MODELS

ISSUE SPECIFIC MODELS	PRESIDENTIAL POLICY PREFERENCE VARIABLE USED	TYPES OF CASES INCLUDED
Social Issue Models	Appointing President's Social Liberalism Score	Criminal cases, issues concerning criminal procedure, due process rights of prisoners, excessive force used by police officers, voting rights, desegregation of schools, employment discrimination, non-employment discrimination, alien petitions, rights of indigents, other 14th Amendment and civil rights cases, commercial speech issues, libel, slander, free exercise of religion, establishment of religion, obscenity, freedom of association, public protests, campaign spending, freedom of information, other due process issues, abortion rights, contraception rights, other privacy issues,
Economic Issue Models	Appointing President's Economic Liberalism Score	Union organizing, unfair labor practices, Fair Labor Standards Act issues, O.S.H.A. issues, collective bargaining, conditions of employment, employment of aliens, union representation and other issues of labor relations, taxation issues, patents and copyrights, intellectual property issues, product liability, employer liability, workers compensation, torts, contract disputes, insurance disputes, debtor-creditor relations, bankruptcy, antitrust litigation, securities issues, federal economic regulation, consumer protection issues, landlord-tenant disputes, utility regulation, government seizure of property, disputes over real property
All Issue Models	Appointing President's NOMINATE Score	All of the case types listed in the above cells