

THE DECISION MAKING OF HISPANIC JUDGES ON THE U.S. COURTS OF
APPEALS, 2003-2004

by

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Under the Direction of Susan Brodie Haire

ABSTRACT

After an overview of the present literature and a summary of the current state of diversity in the federal judiciary, I generate hypotheses and expectations that will be evaluated using data from the Phase III update to the Multi-User Courts of Appeals Database Project (2012). Then, I construct preliminary bivariate analysis of race and voting from the 2003-2004 case data. Next, the effect of race and ethnicity on judges' votes in the U.S. courts of appeals is estimated through multivariate models, first in a pooled model and then in models sorted by the appointing president's political party. Institutional-level controls and demographic variables aid me in evaluating the findings of other judicial politics studies. My interpretation of the results suggests that race and ethnicity are not related to judicial voting. The concluding discussion assesses opportunities for the direction of future research.

INDEX WORDS: appeals courts, federal, judiciary, Hispanic, Latino, race, gender, cases, criminal, diversification, appointments, Carter

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Chapter 1

Introduction

Recent changes to the demographic composition of the federal judiciary have led observers of the courts to question whether new diverse appointees exhibit markedly different decision making than their Caucasian and African American colleagues. The expanding American Latino population¹ has transformed the issue of Hispanic representation in the federal courts into a salient modern-day concern, most notably through the 2009 appointment of Sonia Sotomayor to the Supreme Court. Prior to the Carter Administration, Hispanics comprised 1.1 percent of the federal judiciary, and none served on the circuit courts; by the end of President Carter's time in the White House, that proportion increased to 3.1 percent, with a net change of fourteen positions held (Gryski, Zuk, and Barrow 1994: 1081).² Nineteen Hispanic judges have been appointed to the circuit courts in total. As of 2012, seventeen circuit court judgeships are held by Hispanics (Federal Judiciary Center 2012).³ The primary concern of this study is the decision making of Hispanic judges in relation to other jurists.

After an overview of the present literature and a summary of the current state of diversity in the federal judiciary, I generate hypotheses and expectations that will be evaluated using data from the Phase III update to the Multi-User Courts of Appeals Database Project (2012). Then, I

¹ The Hispanic population was 22.4 million at the time of the 1990 U.S. Census, and the U.S. Census Bureau estimates that the population reached 48.4 million in 2009. Additionally, the Bureau projects that Hispanics will constitute 30 percent of the U.S. population by 2050.

² By comparison, the level of African Americans on the federal bench rose from 4 percent to 8.1 percent under the Carter Administration, with a net gain of 31 seats (Gryski, Zuk, and Barrow 1994: 1081).

³ See Table 1 for the total of Hispanic appointments to date and the number of Hispanic judges serving currently.

conduct a bivariate analysis of race and voting from the 2003-2004 case data. Next, the effect of race and ethnicity on judges' votes in the U.S. courts of appeals is estimated through multivariate models, first in a pooled model and then in models sorted by the appointing president's political party. My results suggest that race and ethnicity are not related to judicial voting. The concluding discussion assesses opportunities for the direction of future research.

This study considers the judicial behavior of Hispanic judges on the U.S. Courts of Appeals in comparison to their fellow Caucasian and African American jurists. It employs new appeals court data in the forthcoming third phase of a multi-user database from 2003 and 2004 to confirm or refute the presence of race effects on the federal appellate bench. The voting patterns of nontraditional⁴ jurists are frequently examined for demographic influences in judicial decision making. If there are differences, Hispanic judges will be more likely to vote in one policy direction than another when compared to the votes of Caucasians and African Americans. Previous literature has focused on the decision-making of women and African Americans on the bench. Applying theories of substantive representation, previous scholars have tested the expectation that minority jurists behave divergently from their colleagues, particularly when deciding the treatment of cases in issue areas that are salient to their group interests.

⁴ In this context, a judge is considered "nontraditional" when s/he is a member of a racial or ethnic minority and/or is female. On the other hand, "traditional" jurists are those who are white and male. This study compares the voting patterns of Hispanic judges to those of Caucasians and African Americans. African Americans are not necessarily traditional in the true sense of the word, so their group will be specified when comparisons across racial groups are made.

President Carter's desire to change the homogenous composition of the district and circuit courts was the impetus for judicial diversification in the late 1970s.⁵ While Carter's appointment agenda gave great concern to race and gender, a nominee's ideology was no less important. Several judgeships were created when Congress passed the Omnibus Judgeship Act. This legislation placed Carter in a uniquely advantageous position that allowed him to appoint many judges to the lower federal courts.

Table 1. Hispanic Judges on Active Status in the Circuit Courts		
<i>Circuit</i>	<i>Number Served</i>	<i>Number Currently Serving</i>
First	1	1
Second	2	1
Third	1	1
Fourth	1	1
Fifth	4	3
Sixth	0	0
Seventh	0	0
Eighth	0	0
Ninth	7	7
Tenth	1	1
Eleventh	1	1
D.C.	0	0
Federal	1	1
Total	19	17
<i>Source: Federal Judicial Center Biographical Directory of Judges (2012).</i>		

The resultant appointments impacted the nomination strategies of future Republican administrations, and Jonathan Rose, Head of the Legal Office of Policy in the Reagan

⁵ Table 2 presents the racial composition of the circuit courts during recent Democratic and Republican administrations.

Administration Justice Department, reflected on the Carter legacy. “By and large, [he] tended to appoint people who have a very activist role in mind for the judiciary, who believe that judicial intervention can solve all manner of problems that might be better left to political intervention,” according to (Gottschall 1983: 165-166). By the end of the Carter Administration, the composition of the federal judiciary had been dramatically altered to include a record number of racial minorities and women.

If Hispanic judges decide cases in a manner that is consistent with the interests of their group, this analysis will find variation in their voting patterns that is distinctive from Caucasians and African Americans. Pitkin (1967) first theorized that descriptive representation, in and of itself, does not translate into the fulfillment of group interests; “[s]ymbolic representation...is not the same as descriptive representation” (Pitkin 1972: 96). Furthermore, substantive representation requires that political elites actively pursue the fulfillment of policies that further the political conditions of their minority constituencies. The norm of consensus holds that judges on the federal courts tend to agree with one another, often through lower trial court deference, and only the most divisive issues cause judges to vote differently from one another. In those instances, judges can use their votes to align case outcomes with their policy preferences. This paper analyzes and tests for racial differences in voting in federal appellate cases for variations in decision making using the logit method of statistical analysis. This analysis will evaluate the proposition that Hispanic judges behave differently than judges of other racial/ethnic groups.

Since the Carter Administration, presidents have diversified the federal bench through their Article II appointment powers. Whereas the courts were once homogeneous and largely comprised of privileged Caucasian males, the American judiciary has recently begun to reflect the diverse composition of the U.S. population. As of this writing, 109 Hispanic judges, 189 African American judges, and 343 female judges have been appointed to the federal courts (Federal Judicial Center 2012). Hispanic representation in judgeships across the thirteen circuits is presented in Table 1 as a tally of the number of judges that have served or are currently serving. Note that the majority of the seventeen sitting judges serve in the Ninth and Fifth Circuits. The remaining seven Hispanic appeals court judges occupy singular positions in the Second, Third, Fourth, Tenth, Eleventh, and Federal Circuits. The presence of one Hispanic judge in the First Circuit makes it more representative than in the other circuits due to the First's small size – there are only six sitting judges total. The absence of Hispanics is readily apparent in the Sixth, Seventh, Eighth, and D.C. Circuits.

Descriptive representation is the notion that government institutions should reflect the population that they serve with respect to race, ethnicity, and gender (see Eschaveste, 2002; Gerard, Gryski, and Barrow, 1994; Mansbridge, 1999; Pitkin, 1967; and Sotomayor, 2002). Full descriptive representation occurs when the composition of an institution, such as the federal courts, mirrors that of society at large. Over the last thirty years, several milestones have characterized this gradual shift in the composition of the bench. African Americans were the first racial minority to be represented in the federal judiciary: William Henry Hastie became the first African American circuit court judge in 1950. Eleven years later, James B. Parsons became the

first African American district court judge. Associate Justice Thurgood Marshall was the first African American judge to serve on the Supreme Court in 1967. Asian Americans were first represented in the circuit courts in 1971, and then in the district courts in 1975. A thirty year gap exists between Judge William Henry Hastie and the first Hispanic appeals court appointee, Reynaldo G. Garza, who was appointed by President Jimmy Carter in 1979. (Garza was also the first Hispanic judge serve in the district courts.) In 1979, the first Native American judge was appointed to the district courts. The first Latino/a to serve on the nation's court of last resort, Associate Supreme Court Justice Sonia Sotomayor, was appointed more than forty years after Associate Justice Thurgood Marshall's 1967 confirmation to the U.S. high court. The gains made by racial/ethnic minority groups in the twentieth century are quite varied. Successive administrations have prioritized the appointment of nontraditional judges to the federal bench with varying degrees of success.

Concurrent with the process of diversification, scholars have attempted to quantify the substantive implications of the changing composition of the appeals courts. However, methodological barriers have prevented the proper statistical analysis of behavior by nontraditional judges at various points. The classic "small N" problem still persists in the study of Native and Asian American judges because so few judges have been appointed from those groups to the federal courts.⁶ Confidence in the results of a quantitative analysis has increased over time as more nontraditional judges have been appointed to the bench. Scholars have

⁶ The low level of representation among Asian Americans and Native Americans is present in the multi-user appeals court database utilized in this study. The 2003-2004 case data contains ten votes by Asian American judges, and no votes by Native Americans.

adopted approaches that take into account the limited number of minority and female judges and their findings, discussed below, illustrate the utility of these approaches. At the same time, judicial scholars have validated the use of measures of ideology such as the Judicial Common Space scores developed by Giles, Hettinger, and Peppers (2001). These measures allow scholars to compare judicial behavior across different time periods and different courts. With nineteen Hispanic judges that have or are currently serving in the appeals courts as of 2012, there are new empirical opportunities for quantitative analysis.

Chapter 2

The Judicial Selection Process

The Courts of Appeals were formed by the Judiciary Act of 1891 as an appellate body with jurisdiction over the lower courts. Today, presidents fill the 179 judgeships under the constitutional authority granted by constitutional appointment powers. About fifty vacancies⁷ occur per annum in the federal courts (Stidham et al. 1996:18). To fortify his or her candidacy for nomination to the federal district or circuit courts, a potential jurist should demonstrate competency, integrity, and ideological similarities to the sitting president. Prior to nomination, lawyers undergo a lengthy professionalization process that might include election or selection to local and state offices (depending on the state of residence), the development of a decision making record, prosecutorial experience, membership in professional organizations, and the formation of political identities along policy concerns. Nominees can be suggested by senators or members of the President's political party (Goldman 2007), although presidents are not required to honor the tradition of senatorial courtesy.

The judiciary is constrained by both elected branches of the federal government through their roles in the selection process. Presidents take note of current vacancies, identify qualified nominees with similar policy preferences, nominate them to the appellate bench, and present

⁷ Carp, Manning, and Stidham provide a succinct explanation of reasons that affect the frequency of judicial vacancies: "The number of appointment opportunities depends on several factors: how many judicial vacancies are inherited from the previous administration,...how many judges and justices die or resign during the president's term, how long the president serves, and whether Congress passes legislation that significantly increases the number of judgeships" (2004: 22).

them to the Senate Judiciary Committee for confirmation hearings. After collecting information and reviewing the background of a nominee, the Committee votes on a course of action to recommend to the Senate – to either confirm, to reject, or to simply refuse to issue a recommendation. Occasionally, the Senate then debates the merit of the nominee until a cloture vote of three-fifths passes, at which point a floor vote is conducted. In these circumstances, nominees require a simple majority vote in order to receive confirmation. Presidential appointment success is usually measured by the rate of confirmation – that is, the frequency with which nominees pass both the committee and floor gauntlets. These conditions permit the legislative and executive branches to control the composition of the federal judiciary, especially through ideological considerations.

Progress toward proportional representation of African Americans and Hispanics in the district and circuit courts has steadily advanced in the last three decades. That being said, presidents clearly have other goals they want to fulfill with the appointment process. It is common for modern presidents to utilize their Article II appointment powers toward ideological ends. This is important because judicial appointees shape the development of policy decades after an administration departs the White House (Goldman 2007). Thus, the ideological makeup of the lower federal judiciary is a continuous concern to modern presidents. The growing use of recess appointments represents the desire among executives for nominees who are ideologically proximate to the sitting president.⁸ Various studies document the differences in judicial

⁸ See Black et al. 2007, 2011.

appointments agendas among Republican and Democratic presidents (see Carp, Manning, and Stidham, 2004, 2008; Goldman et al., 2002; Goldman, Schiavoni, and Slotnick, 2009; Gottschall, 1983, 1986; Haire, Humphries, and Songer, 2000). These nomination choices can serve the goals of ideology, diversification, or both; presidents pursue each one at different rates to the gain or detriment of nontraditional representation.

The scholarship on the federal judicial selection process confirms that presidential appointments are ideologically driven. According to Sheldon Goldman, “[i]t is likely that the use of judicial appointments to further a president’s ideological policy agenda will continue to occur as long as the courts are vehicles for the articulation of public policy” (2007: 902). Furthermore, presidents are motivated to extend their policy preferences into the judiciary, even when the political climate makes it difficult to do so.⁹ Holmes (2007) found that presidents speak publicly on behalf of their circuit court nominees – sometimes at the cost of political capital – when it appears that the Senate is unlikely to confirm the nominee. Nominees who are selected using senatorial courtesy are more likely to reflect a party’s political agenda than the president’s (Giles, Hettinger, and Peppers 2001). When presidents bypass the use of senatorial courtesy, they place their personal policy preferences above relationships within their political parties. The outlook for the future of diverse judicial appointments is positive. It is politically easier for presidents to appoint a minority judge to an already-diverse bench in the district courts. Additionally, the growing pool of Hispanic lawyers increases the likelihood of future Hispanic

⁹ Presidents have unilateral tools like recess appointments to use in shaping the judiciary (Black, Lynch, Madonna, & Owens 2007).

appointees (Solberg and Bratton 2005). In summary, presidents have many opportunities to make diverse appointments during their time in the White House.

The ideological distance between the president and the Senate affects the outcome of the confirmation process. Solowiej, Martinek, and Brunell (2005) developed a hierarchy of expeditious confirmations by finding that decisions occurred most quickly “under unified Republican control, followed by unified Democratic control, divided control with a Republican president, and divided control under a Democratic president (2005: 557). Lastly, “[p]residents’ ideological preferences and signals to presidents from minority representation in the House affect the likelihood of minority nominations to the circuit courts” (Killian 2008: 280). Just as the judicial branch is constrained by the elected branches, the executive is limited by an unfavorable Congressional atmosphere through the doctrine of separation of powers that is so fundamental to the U.S. constitutional system. Martinek, Kemper, and Van Winkle (2002) found that the likelihood of rejection is not related to race or gender; rather, the length of the confirmation process is centered on the nominee’s qualifications, the partisan composition of the Senate Judiciary Committee, and pending nominations that the president has already made. Although presidents are highly ideologically motivated to influence judicial policy, their attempts to do so are tempered by the decisions of the legislative branch.

Chapter 3

Diversifying the Judiciary

In the last thirty years, each administration has pursued a unique judicial selection agenda. Presidents Jimmy Carter and William J. Clinton embraced diversification by selecting judges with nontraditional demographic features such as women, African Americans, and Hispanics. In doing so, these Democratic presidents filled the lower federal courts with ideologically proximate appointees from groups that were underrepresented in the U.S. judicial system. Republican presidents have given less consideration to diversity when filling judgeships. Presidents Reagan, Bush, and W. Bush have continued court diversification to varying degrees. The primary emphasis of the Reagan-Bush era involved nominating conservative circuit court judges to counteract the left-leaning policies of the Carter cohort. However, President George W. Bush's selection agenda has merged the ideological considerations of his fellow Republican presidents with the diversification goals initiated by President Carter. This study considers the policy impacts of diversification, and how presidential appointment agendas impact the ideological and racial composition of the appellate courts.

The Carter Era

Observers of the courts assess diversification by examining the extent to which presidents demonstrate a commitment to nontraditional seats in the judicial selection process. The amount of nontraditional appointees varies according to presidents' success in Senate confirmations and whether judicial diversity was considered an important goal in shaping the composition of the

courts. President Jimmy Carter established the standard by which executives are evaluated in terms of descriptive representation. Proportionally, Carter's appeals court appointees were 78.6 percent Caucasian, 16.1 percent African American, 3.6 percent Hispanic, and 1.8 percent Asian American (Goldman 2000: 249).¹⁰ The 1978 Omnibus Judgeship Act was instrumental to President Carter's appointment record, as it created more than 150 judgeships in a single act of Congress. Since then, levels of diversification have varied according to the party of the appointing administration. As detailed in Table 2, Republican presidents have appointed fewer African Americans and Hispanics than Democratic presidents. In fact, seven of the seventeen Hispanics serving in the appellate courts in 2004 were appointed by President Clinton.

Table 2. Racial Composition of the Federal Appeals Court Bench by Presidential Appointment Cohort					
Race ¹¹	Carter % (N)	Reagan % (N)	Bush % (N)	Clinton % (N)	W. Bush % (N)
<i>Caucasian</i>	78.6 (44)	97.4 (76)	89.2 (33)	73.8 (45)	84.7 (50)
<i>African Amer.</i>	16.1 (9)	1.3 (1)	5.4 (2)	13.1 (8)	10.2 (6)
<i>Hispanic</i>	3.6 (2)	1.3 (1)	5.4 (2)	11.5 (7)	5.1 (3)
<i>Asian Amer.</i>	1.8 (1)	---	---	1.6 (1)	---
<i>Source: Goldman, Schiavoni, and Slotnick (2008: 284).</i>					

¹⁰ Forty-four appointees were white, nine were African American, two were Hispanic, one was Asian American, and none were Native American (Goldman 2000: 249).

¹¹ The category for Native Americans has been excluded from Table 2 because there were no appointments from this group during these administrations.

The Reagan-Bush Era

The large influx of Carter appointees comprised nearly 40 percent of the federal judiciary when President Ronald Reagan took office in 1981.¹² The racial makeup of Reagan's first term circuit court appointments was 93 percent Caucasian, 3.2 percent African American, and 3.2 percent Hispanic; Reagan nominated only one Hispanic candidate and one African American candidate (Goldman 1984: 325). By the conclusion of his second term, the racial proportions of his appointees varied little – all told, Caucasians comprised 97.4 percent, while African Americans and Hispanics each composed 1.3 percent of the total appointees (Goldman 1991: 303).¹³ In reaction to the large number of sitting Carter appointees, Reagan pursued a selection agenda based on policy preferences rather than diversity.¹⁴

President George H.W. Bush took office in 1989, and pursued a selection agenda that was similar to his predecessor. At Bush's midterm point, Goldman (1991) expected that few minorities would make an appearance in the remaining two years of his presidency. In a follow-up study, he demonstrated that his prediction was correct: Caucasians represented 88.9 percent of

¹² However, the Reagan and H.W. Bush administrations did not actively pursue Carter's diversification program

¹³ In total, Reagan appointed 76 whites, one African American, one Hispanic, zero Asian Americans, and zero Native Americans (Goldman 2000: 249).

¹⁴ In addition to promoting policy interests over diversification, Reagan nominated the youngest cohort on record, ineffectively challenged low judicial salaries, experienced an average amount of unsuccessful nominations, and faced intense criticism following the failed nomination of Robert Bork to the Supreme Court. The average age of Reagan's second-term appointees was the youngest to date at 48.1 years; additionally, the proportion of appointees under age 45 was 39 percent -- twice that of President Carter's appointees (Goldman 1987: 94). Goldman proposes that Reagan diminished the quality of the bench by recruiting young judges to low paying judgeships: each second-term appointee to the circuit courts under age 40 received a split ABA rating. During the Reagan administration, judicial salaries fell below those of practicing lawyers; the president proposed meager increases that failed in Congress. During "the last two years of the Reagan presidency[,]...three district court and two appeals court nominations were withdrawn and nine district court and six appeals court nominees were not acted upon" (Goldman 1991: 295).

appeals courts appointments, while Hispanics and African Americans each comprised 5.6 percent of the judges selected (Goldman 1991: 303). Proportionally, President George H.W. Bush's appointees were 89.2 percent white, 5.4 percent African American, and 5.4 percent Hispanic (Goldman 2000: 249).¹⁵ Bush experienced greater confirmation success in presenting his appointees to the 101st Congress than he did during the following Congressional session.¹⁶ The Federal Judgeships Act of 1990 produced a windfall of vacancies by creating 74 federal district and eleven new appeals court judgeships. George H.W. Bush benefited from newly enacted legislation and an ideologically similar 101st Congress during his time in office.

The Clinton Administration

After stalling in the 1980s, judicial diversification gained momentum during the Clinton presidency, and has made additional progress under the W. Bush and Obama administrations. In the early 1990s, the federal bench was largely conservative: Goldman (1991) correctly forecasted that Reagan and Bush appointees would occupy two-thirds of the federal judiciary by 1993. Wenner and Ostberg (1993) show that Reagan-Bush appointees from the Ninth and D.C. circuits tend to vote to support business interests more often than environmental causes, thereby towing the conservative line of their appointing president's party. There were no Asian Americans or Native Americans appointed to the appeals courts during the Reagan-Bush era.

¹⁵ George H.W. Bush appointed 33 Caucasians, two African Americans, zero Asian Americans, and zero Native Americans (Goldman 2000: 249).

¹⁶ "In total, President Bush appointed 48 district court and 18 appeals court judges and one Supreme Court justice, for a total of 9.2 per[cent] of the permanent Article III judgeships on courts of general jurisdiction" (Goldman 1991: 295), the majority of which were appointed during the 101st Congress.

President William J. Clinton revived Carter's policy of diversifying the federal judiciary, although the influence of his appointees was moderated by the large majority¹⁷ of currently sitting Republican appointees and the moderate ideology of his cohort. He increased minority representation in five circuits (Spill and Bratton 2001: 258), and usually filled vacancies created with the departure of women and minorities with appointees of the same demographic features.¹⁸ The success of a president's appointment agenda depends on the extent to which he is ideologically similar to Congress. In the 103rd Congress, 90 percent of the appointees reviewed by the Senate received confirmation, whereas in the 104th Congress, 70 percent of Clinton's appointees were confirmed (Goldman and Slotnick 1996: 255). By the end of his presidency, about one-fourth of federal judgeships and 17 percent of appeals court seats held a Clinton appointee (Goldman and Slotnick 1996: 272).¹⁹ Clinton's appointments extended his policy preferences into the judiciary thanks to Congressional cooperation.

Although President Clinton made substantial gains in minority representation across the lower federal courts, Hispanics did not enjoy the levels of success that African Americans did in terms of being named to a judicial position during Clinton's first term.²⁰ During Clinton's second

¹⁷ "President Clinton's impact on the judiciary has been slower to manifest itself because his judicial nominees entered an arena in which more than 75 percent of the trial and appellate court seats were held by judges appointed by GOP presidents with very conservative orientations" (Carp, Manning, and Stidham 2004: 24).

¹⁸ Half of the vacancies left by Hispanics were filled by nominees from the same race, while most vacancies left by African Americans were filled by nominees from the same race. Clinton exhibits an appointment pattern of maintenance through these non-traditional replacements, according to Spill and Bratton (2001).

¹⁹ In comparison, the Reagan-Bush appointees held 53 percent of all federal judgeships, and they occupied 55 percent of appeals court judgeships (Goldman and Slotnick 1996: 272).

²⁰ African Americans enjoyed a 76.5 percent increase in the proportion of representation on the district courts, Native Americans received a 100 percent increase, and women gained 64.7 percent; Hispanics received only a 3.4 percent gain and Asian Americans suffered a 25 percent reduction. On the appeals courts, there was no change

term, African Americans made fewer gains in federal judgeships than they did under Carter, and Hispanic appointments surpassed previous levels. “For the first time in American history, nontraditional appointees to the federal courts of appeals constituted a majority of one president’s appointees” (Goldman 2000:248). Clinton appointed a record number of women, surpassing all previous presidents: Carter and Bush are nearly identical at second place, and Reagan occupies a distant fourth place (Goldman 2000: 247). Although these appointees represented diverse groups, they were ideologically similar to the appointees of other Democratic presidents, a fact that classifies the cohort as moderate rather than left-leaning (Haire, Humphries, and Songer 2000: 280).²¹ Clinton’s appeals courts appointees were 73.8 percent Caucasian, 13.1 percent African American, 11.5 percent Hispanic, and 1.6 percent Asian American (Goldman 2000: 249).²² The Clinton presidency marks a revival of former President Carter’s judicial legacy, a pattern of naming women and minorities that was sustained under Republican President George W. Bush.

The W. Bush Presidency

When George W. Bush became president in 2001, the Democratic-Republican split among the lower court judges was almost identical: 51 percent were Republican appointees and 49 percent were Democratic appointees (Carp, Manning, and Stidham 2004: 25). Upon his

among African Americans and Asian Americans, women received a 31.8 percent gain, and Hispanics enjoyed the highest proportion at 50 percent (Goldman and Slotnick 1996: 270).

²¹In criminal issue areas, Clinton appointees voted liberally 54 percent of the time while Carter appointees in 48 percent of cases, Bush appointees in 26 percent of cases, and Reagan appointees in 35 percent of cases (Haire, Humphries, and Songer 2000: 279).

²² In total, Clinton appointed 45 Caucasians, eight African Americans, seven Hispanics, one Asian American, and zero Native Americans to the appeals courts (Goldman 2000: 249).

inauguration, Bush inherited a sizeable amount of vacancies due to the gridlock that stymied former President Clinton's appointment efforts. While the Bush administration is criticized for filling many diverse vacancies with traditional appointees through a strategy of non-replacement, Hispanics still gained significant representation during his first term.²³ Bush's appointments increased the diversity of two circuits, but decreased minority representation in five circuits (Solberg 2005: 280). Three circuits had more than one Hispanic on the bench by the end of his first term in the White House. However, "his appointments decreased the levels of diversity on five" appeals courts, indicating the absence of a consistent replacement strategy (Solberg 2005: 280).

By 2005, Bush had appointed more nontraditional appointees than George H.W. Bush and Ronald Reagan while still actively pursuing his ideological agenda (Solberg 2005). His appointment success signifies a change in course from previous Republican administrations because he pursued ideological and diversification agendas simultaneously. According to Carp, Manning, and Stidham (2004: 22), Bush's appointment strategy emphasized policy preferences over minority representation; it is noted that his appointees' conservatism is on par with the Reagan cohort. Proportionately, President George W. Bush's appointees were 84.7 percent Caucasian, 10.2 percent African American, and 5.1 percent Hispanic (Goldman, Schiavoni, and Slotnick 2008: 284).²⁴ Although minority groups did not fare as well under Bush as they did

²³ G. W. Bush's Hispanic appointees to the district courts were equal to Clinton's amount by 2004. G. W. Bush's Hispanic appointees to the district courts were equal to Clinton's amount by 2004.

²⁴ In his two terms in office, George W. Bush appointed 50 Caucasians, six African Americans, three Hispanics, zero Asian Americans, and zero Native Americans (Goldman, Schiavoni, and Slotnick 2008: 284).

under Clinton, the Bush administration exhibited a positive diversion from the strategies of previous Republican presidents.

Although the composition of the circuit courts remains disproportionate to that of American society, recent diversification efforts have improved minority representation in the judicial branch. As of 2012, nineteen Hispanics, 28 African Americans, and one Asian American have been appointed to the U.S. Courts of Appeals. Generally, Democratic presidents appoint more nontraditional judges than Republican presidents, but there is reason to believe that trend could be time-bound.²⁵ Hispanics occupy a rapidly growing segment of the American population, and their limited presence in the judicial system is increasingly apparent. Proportional representation does not yet exist at the circuit court level, so the appointment record of these presidents suggests that progress is more gradual than proponents of diversification would have hoped.

²⁵ The number of Hispanics in the United States has increased substantially since the Carter administration, and perhaps presidents from previous decades were not as concerned with Hispanic representation because the group occupied a smaller proportion of the population.

Chapter 4

Theories of Representation

Substantive versus Descriptive Representation

The concept of representation has accumulated several forms in judicial diversity scholarship. The most effective and purposeful type of representation is substantive in nature, which occurs when "public officials...act to benefit members of groups of which they are a part" (Collins and Moyer 2008: 220). In contrast, the presence of diverse political elites is the only requirement to achieve descriptive representation.²⁶ Representation is insufficient to meet group interests when just one member of a minority occupies a singular place in an institution like the courts. Normative democratic theorists distinguish descriptive from substantive representation by suggesting that, even if diversity in political offices reflects the make-up of society, researchers cannot assume that minority groups' interests are automatically served. For example, even if the circuit courts' composition is directly proportional to American society, minority representation will still be inadequate if it is not substantively representative of those groups' interests.

Mansbridge (1999) suggests that the nature of racial identity makes aggregating individual interests at the group level problematic; historical political subordination, system-level distrust, low political participation, and uncrystallized group interests form barriers to group cohesion and mobilization. According to Johnson and Fuentes-Rohwer (2004:15-19), Hispanics experience the social and legal consequences of being a minority in ways that are comparable to

²⁶ Pitkin (1967) was the first to distinguish between these types of representation.

discrimination against African Americans. However, the cultural histories of these groups differ dramatically; their interpretation of the effects of minority status and historical subjugation are informed by characteristics unique to each group. Developments in legal policy in the future that protect minority groups and advance their interests are strong indicators of substantive representation.

Representation among Nontraditional Judges

Previous empirical research on decision making by minorities largely centered on African American trial judges. These studies provide only partial support for the expectation that minority groups will behave differently than Caucasian judges on the bench in a handful of issue areas. For example, Uhlman's (1978) analysis of criminal cases concluded that the decision making of African American judges was somewhat distinguishable from traditional judges, but for reasons other than their minority status. In another study, African American judges have been shown to exhibit leniency when sentencing defendants of the same race, while demonstrating harsher behavior when sentencing Caucasian defendants (Welch, Combs, and Gruhl 1988). More recently, Steffensmeier and Britt (2001) found that African American judges sentence African American and Caucasian defendants to similar degrees. Discrimination cases heard by the Michigan state supreme court are more likely to receive a liberal vote when the judge is African American (Martin and Pyle 1999). Collectively, these studies suggest that, in criminal cases, the race of the judge plays a limited role in decision making.

At the district court level, Walker and Barrow (1985) did not find evidence of race effects in their examination of African American and Caucasian judges. However, Gottschall (1983) reported that black judges voted in favor of the criminal defendant's position 79 percent of the time in the appellate courts. In contrast, Farhang and Wawro (2004) obtained null results for race effects at the individual and panel levels in their analysis of employment discrimination cases before the circuit courts. In their sample of four African American and two Hispanic female circuit judges, Collins and Moyer (2008) found that their decisions were different when compared to other cohorts in criminal cases. In his study of judicial diversity in the courts of appeals, Kastellec (2012) found evidence of racial effects at both the individual and group levels, noting that the assignment of an African American judge to a panel almost always ensures a liberal policy outcome in affirmative action cases. "[B]lack judges are much more likely than nonblack judges to support affirmative action plans and do so at a rate of about 90%. In turn, nonblack judges who sit with a black colleague uphold affirmative action plans about 80% of the time" (Kastellec 2012: 13). The results of these studies suggest that African American judges are more likely to support the liberal policy in limited issue areas. If this finding is a reflection on minority status, then one would also expect Hispanic judges to support policy outcomes in a similar fashion. Hispanic judges, like other minorities, would be more likely to support "liberal" positions, including those that favor plaintiffs in civil rights cases, defendants in criminal cases, plaintiffs in civil liberties cases, and economic disadvantaged litigants.

H1a: Given their minority status, Hispanic judges will support liberal policy outcomes similar to those taken by African American judges.

Chapter 5

Understanding the Nature of Hispanic Representation

Many theories of representation delineate how the social and cultural experiences of minority groups shape their behavior in ways that contrast with the Caucasian majority. Studies of the legislative branch attempt to classify the nature of minority representation. However, the literature has demonstrated a tenuous link between descriptive and substantive representation among racial minority groups. There are very few analyses that account for Hispanic decision making in the judicial politics field. Perhaps the literature on the voting patterns of Hispanic members of Congress can inform the discussion on the effects of an increasingly diverse federal bench. Some studies find no support for the expectation that descriptive representation – that is, the presence of a satisfactory number of Hispanic representatives – can be connected to the direct, substantive representation. The theoretical linkage between substantive representation and the presence of minorities in an institution is weak, but the scholarship provides some estimation of the form it takes.

Congressional Studies

In the search for evidence of minority representation, scholars evaluate the rates at which minority members of Congress advance the issues that are most salient to their constituents. Studies of Congress use the roll call vote as a common unit of analysis because it is a readily available resource for gauging the behavior of members of Congress against the perspectives brought forth by minority groups' interests. Knoll (2009) dispels the notion that descriptive

representation automatically results in gains by a minority group: Hispanics are not more likely to be substantively represented by their elected group members, and Hispanic members of Congress do not necessarily espouse the same issues that are most important to their constituents. According to Knoll, representation does not manifest as a direct and clear relationship between Hispanic constituents and their representatives. They “are not more likely to be substantively represented by fellow Latinos, nor do larger Latino constituencies affect a lawmaker’s propensity to vote in favor of Latino interests” (Knoll 2009: 179).

Additionally, the composition of a district does not guarantee the proportionate consideration of a group’s interests. Griffin and Newman (2007) found that the minority status of Hispanics in the United States is not the facile explanation for unequal representation that it appears to be. The nature of representation can be quantified by studying the voting records of Hispanic legislators as well. In Congress, Hispanic group interests are more likely to be substantively represented by Democrats than Republicans (Knoll 2009: 179). Hispanic representatives tend to sponsor more pro-Hispanic legislation than other members of Congress, as evidenced by Wilson’s (2011) study on legislation from the 109th and 110th Congresses. Hero and Tolbert (1994: 640) find that the representation of Hispanic constituents occurs in the form of “collective or partisan substantive” action when salient legislation is present, but they do not find a direct link to uniquely Hispanic concerns.

Some Congressional studies compare the levels of substantive representation across different minority groups. Using minority interest group ratings and roll call votes from the 104th and 108th Congresses, Hero and Preuhs (2010) demonstrate that African Americans and

Hispanics are sensitive to the issues that each group considers salient, although black representatives tend to be slightly more supportive of their Hispanic colleagues' concerns than Hispanics are of their African American colleagues' interests. For both Hispanic and African American members of Congress, Clifford (2012) finds that they are ideologically similar to their white constituents, and farther from their minority constituents, because diverse representatives tend to come from more heterogeneous districts. Although similarities have been identified across these groups, scholars must be cautious in making generalizations for diversity lessons across minorities. For example, historical subjugation informs the nature of African American representation differently than the present day obstacles contribute to our understanding of Hispanic group interests. Collectively, these studies suggest the need to design an analysis that will permit the exploration of differences in behavior between African American and Hispanic judges. To answer such a question, I proceed by analyzing the voting patterns of nontraditional appellate court judges.

Judicial Politics Studies

Although many minority groups share an historical record of underrepresentation and blatant discrimination, the events and values that characterize their respective cultures are too varied to assume that the nature of representation is manifests identically across all groups. According to Gryski, Zuk, and Barrow (1994), the reasons that a given minority group makes gains in judicial representation cannot be applied carte blanche as new determinants of another

group's degree of presence on the federal bench.²⁷ The present composition of the federal judiciary is not proportionally representative to the population of the United States.

Unfortunately, "token representation is still often the norm for Hispanic, Asian-American, and black judges, and many courts (eight of the twelve) have *either* a black or a Hispanic judge(s), but not both" (Solberg 2006: 262). Furthermore, scholars must continue to develop innovative research methods to uncover a more nuanced appreciation of decision making among nontraditional judges. Researchers have to be cautious when attributing differences in decision making to racial status because nontraditional status may also be related to age,²⁸ career experience, experience, and organizational involvement. Additionally, African Americans are appointed to judicial seats for different reasons than Hispanics.²⁹

The primary lesson that can be applied from the Congressional literature concerns the indirect nature of representation. In the appeals courts, descriptive representation is inadequate support for the expectation that real policy gains can be made by nontraditional judges by the simple virtue of their presence. While research on legislative behavior is suggestive, it is not clear if the findings will hold up in the judicial context. Will the voting behavior of Hispanic

²⁷ The authors summarize their findings on representation at the state and local level in relation to the levels of minority judges in the circuit courts: "Whereas the recruitment of African Americans is attributed primarily to political and demographic factors, Latino representation is most strongly influenced by socioeconomic factors" (Gryski, Zuk, and Barrow 1994: 1076).

²⁸ "Generally, female, African American, and Hispanic judges are somewhat younger than their white or male counterparts" (Solberg and Bratton 2005: 122). The same study found that Hispanics are more likely to have experience in legal aid and civil liberties organizations.

²⁹ Despite these similarities, the diversification of the district courts is attributable to factors that are unique to each minority group. African Americans judges' appointments can be explained by political and demographic reasons, while Latino/a judges' ascent to the bench depends on socioeconomic factors (Gryski, Zuk, and Barrow 1994: 1076).

judges follow the overall portrait of more liberal voting by African American judges? If the linkage is minority status (anti-Caucasian white), then one would expect to find similarities in voting patterns from both minority racial groups. If the link concerns racial differences in voting behavior that reflect group interests and differences in political/legal socialization, I would expect that Hispanic judges exhibit distinctive voting behavior.

Although many Latinos have historical ties to their countries of origin, scholars describe how the political socialization leads to the adoption of common perspectives (de la Garza 1995; Michelson 2001) and results in ideals that are similar to those of U.S. residents (de la Garza and Yetim 2003). The term “Hispanic” comprises several groups of people with varying party memberships and countries of origin. Although most Hispanics identify as Democrat (Cain et al. 1991; Uhlaner and Garcia 2002), the partisan affiliation of Cubans and Puerto Ricans is shown to be less stable than that of Mexican Americans (Alvarez and Bedolla 2001). Mexican Americans are more likely to be Democrats, and Cubans and Puerto Ricans are somewhat more likely to be Republicans. Common Latino concerns include immigration, affirmative action, and interactions with the courts. Surprisingly, immigration is a rather minor concern at the group level, according to Parchon et al. (2000). Affirmative action is more salient, although it varies by country of origin like the stability of partisan affiliation (Uhlaner and Garcia 2002). In contrast to African Americans, Hispanics tend to be supportive of the court system, and they report positive views of police officials (de la Garza and DeSipio 2001).

Studies of the behavior of African Americans and Hispanics have detected differences in policy outcomes and the nature of representation within these groups. The findings of Knoll

(2009) and Griffin and Newnan (2007) reinforce the work of representation theorists by concluding that descriptive representation does not naturally result in substantive policy gains for the interests of minority groups. This study continues the search for understanding the nature of Hispanic representation in the judiciary by positing that the liberal-conservative voting patterns of Latino jurists will contrast with the other judges' policy preferences. Judicial politics studies have identified mixed race effects in the pro-defendant voting patterns of African Americans in criminal cases. Here, I test that the expectation that voting behavior by Hispanic judges will be distinctive from their colleagues.

H1b: Hispanic judges will support policy outcomes that are distinct from those taken by African American judges, as well as Caucasian judges.

Chapter 6

Research Design

This study utilizes case and biographical data from the multi-user databases on the U.S. Courts of Appeals (Songer 1997), the Attributes of U.S. Appeals Court Judges database (Zuk, Barrow, and Gryski 1997), and the Federal Judicial Center website (<http://www.fjc.gov>). The third phase of the multi-user appeals courts database contains data from Hispanic, African American, and Caucasian judges from cases decided in 2003 to 2004. The previous phases of the database contain case data from 1925 to 2002, and several studies have successfully used these updates to examine judicial decision making (see Collins 2010; Giles, Hettinger, and Peppers 2001; Haire 2006; Haire, Humphries, and Songer 2001; Killian 2008; and Massie and Johnson 2002). First, I present bivariate analyses that provide a portrait of liberal/conservative voting by race/ethnicity for all issue areas and also when controlling for criminal cases. Then, I estimate the effects of race/ethnicity in a pooled logit model, taking into account other influences on voting behavior. Third, I separate observations to determine whether race effects are conditioned by the party of the appointing president.

On these courts, judges tend to disagree with their colleagues only when there is a contentious point under consideration in a case. For this reason, any effects found to be associated with race/ethnicity are expected to be relatively small in magnitude. Judges typically side with the government when reviewing criminal cases, so I expect that the coefficient for **Criminal** will be strong, negative, and statistically significant. The likelihood of a liberal vote

decreases in criminal cases. I also expect that judges will be more likely to support a liberal outcome when the lower court also supported a liberal outcome.

Presidential appointment agendas have served ideological goals even when simultaneously pursuing a program of diversification. The long-term policy implications of Carter's judicial cohort were magnified by the large number of vacancies created through legislation and the pronounced liberal predisposition of his appointees. Attempts to neutralize the decisions made by these judges consumed the political capital of successive Republican presidents. Judicial diversification stagnated during the Reagan-Bush era, and then gained momentum under President Clinton. In fact, seven of the seventeen Hispanic judges in the 2003-2004 multi-user dataset are Clinton appointees. George W. Bush's first term in office has evidenced a combination of approaches to filling the lower federal courts. His recent gains in diversity are greater than those made by his Republican predecessors, but less impressive than appointments made under Carter and Clinton. Democratic administrations have been more successful in appointing heterogeneous judges than Republican ones.

Since the executive branch has the ability to infuse the dominant policy preferences into the judiciary through Article II powers, I predict that the decision making of judges will be influenced by ideology. I also explore whether the effect of race is conditioned on the appointing president's party. Modeling these appointee party cohorts separately prevents the effect of Hispanic identity from being "washed out," as it might be in a model that does not distinguish between the two possible party affiliations of an appointing president. To test this hypothesis, I present a pooled model that is then sorted by political party. In this study, the excluded reference

group consists of Caucasians in the pooled logit model, and non-Hispanics³⁰ in the separated models. I expect that the likelihood of a liberal vote will increase when the judge is a Hispanic Democratic appointee, and that the likelihood will decrease when the judge is a Hispanic Republican appointee. The variable for a Hispanic judge will be positive in the Democratic model and negative in the Republican model.

On the other end of the ideological spectrum, I expect that Republican Hispanic appointees will be more conservative than other Republican appointees. The JCS scores are constructed so that higher values are associated with more conservative voting. As a judge's ideological predisposition becomes more conservative, the likelihood of a liberal vote decreases. This prediction will be evaluated in the multivariate analysis according to whether the coefficient for **JCSscore** is strong in the negative direction, and if it is statistically significant. I expect that the variable for lower court deference will be positive and statistically significant because the tendency to affirm is high in circuit court cases.

Table 3. Expectations	
<i>Expectation</i>	<i>Predicted Direction</i>
- In the pooled model, <i>H1a</i> suggests that Hispanic judges will be more likely to support the liberal position, similar to their African American colleagues. <i>H1b</i> suggests that Hispanic judges will vote differently from African American and Caucasian colleagues. - In the separated models, the likelihood	- In the pooled model, <i>H1a</i> predicts a positive coefficient for Hispanic, similar to that for African Americans (relative to the Caucasian excluded reference category). <i>H1b</i> predicts distinctive behavior for Hispanics that may be negatively/positively signed. In the

³⁰ Note that in this sense, “non-Hispanics” refer to African Americans and Caucasians.

of a liberal vote increases when the judge is a Hispanic appointed by a Democratic president, and the likelihood of a liberal vote decreases when the judge is a Hispanic appointed by a Republican president.	separated model, the coefficient for Hispanic will be positive in the clustered model of Democratic appointees, and it will be negative in the clustered model of Republican appointees. • In both models, the coefficients will be strong and statistically significant.
As a judge's ideological predisposition becomes more conservative, the likelihood of a liberal vote decreases.	The coefficient for JCSscore will be strong in the negative direction and statistically significant.
The likelihood of a liberal vote decreases in criminal cases.	The coefficient for Criminal will be strong in the negative direction and statistically significant.
Judges will be more likely to support a liberal outcome when the lower court also supported a liberal outcome.	The coefficient for Lowdir will be strong in the positive direction and statistically significant.

Sources of Data

To assess whether Hispanic judges behave differently than their traditional colleagues, the multi-user database on the U.S. Courts of Appeals (Songer 1997) is used in conjunction with the forthcoming Phase III update. The database is archived at the Judicial Research Initiative (JuRI) at the University of South Carolina.³¹ The analysis is confined to cases from 2003 and 2004 from the U.S. Courts of Appeals.³² Additionally, the multi-user database uses a stratified sampling method that produces 30 case observations per circuit year, for a total of 720 cases in the sample. It is important to note that only published opinions have been sampled because the

³¹ The JuRI website is located at <http://artsandsciences.sc.edu/poli/juri>. In addition to Songer, Kirk A. Randazzo and Lee D. Walker at the University of South Carolina and Harold J. Spaeth at Michigan State University presently serve as JuRI research faculty.

³² As the third phase update to the Multi-User Database on the U.S. Courts of Appeals is forthcoming, the data for 2003 and 2004 were the years available for analysis at the time of writing.

substantive impact of minority representation is precedential. These binding opinions influence the decision making of future appeals court panels to a degree that is not likely to be achieved through the inclusion of unpublished opinions. After excluding cases where the outcome had no clear policy direction and those in which the votes of judges who could not be identified, the number of observations was set at 1,276 judge-votes.

As with the previous databases, Phase III³³ relies on a stratified sampling method to obtain sample cases from the U.S. courts of appeals from 2003 through 2010. The coding guidelines follow the form of the original Songer (1997) database, and the resultant dataset was merged with new biographical data from the Zuk, Gryski, and Barrow (1997) judge attribute data. Finally, some additional information was supplemented by the Federal Judicial Center. This study examines the available sample of cases from 2003 and 2004 to analyze the voting behavior of appellate court judges.

Table 4. Directionality of Case Outcomes		
<i>Issue Area of Case</i>	<i>Liberal Vote Supports:</i>	<i>Conservative Vote Supports:</i>
Criminal	The defendant	Government or prosecutorial agency
Civil Rights (General)	The person claiming that their rights have been violated	Opposite
<i>Desegregation</i>	Most extensive desegregation plan (when considering multiple plans)	Least restrictive option
<i>Reverse Discrimination</i>	Claim of woman or racial minority	Opposite

³³ Phase III of the multi-user database is accessed via the internet at <http://www.poliscidata.com>, and it updates the case data from 2003 through 2010.

First Amendment	Broadest interpretation of amendment	Narrowest interpretation of amendment
Due Process	Person claiming rights have been violated	Opposite
Privacy	Person claiming rights have been violated	Opposite
Labor Relations (General)	Worker, union, or government agency	Management
<i>Government Regulation</i>	Regulation/authority of agency	Party opposing regulation
<i>Union Issue (Brought by Workers)</i>	Workers	Union
<i>Union Issue (Brought by Management)</i>	Union	Management
Economic Activity and Regulation	Economic underdog	Economic upperdog
<i>Taxation</i>	Government	Taxpayer
<i>Tort Law</i>	Person alleging injury	Opposite outcome
Commercial (General)	Economic underdog	Economic upperdog
<i>Bankruptcy</i>	Debtor	Opposite outcome
<i>Antitrust and Business Mergers</i>	Government or private party raising claim	Opposite outcome
<i>Government Benefits</i>	Individual	Government
<i>Government Regulation of Business</i>	Government regulation	Business
<i>Consumer and Environmental Protections</i>	Consumer or environmental protection	Business
Miscellaneous	--	--
<i>Federalism</i>	Federal power	Opposite outcome
<i>Attorneys</i>	Attorney	Claimant
<i>Selective Service</i>	Selective service regulation or government interest in dispute	Any other position
<i>Authority of Magistrate or Referee</i>	Judge or referee	Challenge to authority
<i>Native Americans (General)</i>	Native American claimant	Opposite outcome
<i>Indian Laws</i>	Government	Tribe or agency upholding Native American law
<i>International Law</i>	Government	Opposite
<i>Immigration</i>	Government	Alien
<i>Patriot Act</i>	Government	Party challenging to Patriot Act

Table 4 presents the coding guidelines for each issue area in the dataset. Policy outcomes are categorized according to liberal-conservative definitions that reflect the overall ideological direction of the case treatment. The directionality of case decisions is coded according to “conservative” policy outcomes (1), mixed outcomes (2), and “liberal” policy outcomes (3) as set forth by the multi-user dataset’s codebook. In the previous sections, studies that found race and gender effects were discussed. Those results occupy the criminal and civil rights issue categories, so I specify how the codebook treats those types of cases, and I control for criminal case type in the later logit analyses. Criminal and prisoner petitions receive a “3” when a judge votes in favor of the defendant’s position, and they receive a “1” when the vote favors the government’s position. Votes in civil rights cases are denoted as liberal when they favor the position of the claimant and conservative for the opposite outcome. Some civil rights issue areas are coded according to specific circumstances. In desegregation cases, the most liberal outcome is classified as that which implements the most extensive desegregation plan when there are multiple plans under consideration. The treatment of reverse discrimination cases is coded as liberal when the vote upholds the claim of the woman or racial minority (thereby opposing the claim of reverse discrimination), and the outcomes are coded as conservative when the vote favors the opposite outcome. Under First Amendment rights violations, the most liberal vote is that which applies the broadest interpretation of protection.

Other major issue areas include labor relations, economic regulation and activity, and commercial disputes. Some miscellaneous issues also receive specification. Support for federal power is considered liberal behavior, while a vote in the opposite direction is considered

conservative behavior. With issues involving attorneys, a vote is liberal when it favors the attorney's position, and a vote is conservative when it favors the opposing view point. When reviewing selective service cases, liberal judge-votes uphold the validity of the challenged selective service regulation at hand or for the government interest in dispute with someone attempting to resist induction; votes for any other position are coded conservative.

Special circumstances separate common cases from less frequent types. The authority of a magistrate or referee is upheld by liberal votes, and when a judge challenges the authority, the vote is coded conservative. When cases involve Native Americans, a liberal vote favors the Native American criminal defendant or the claim of the tribe unless the case involves a conflict between Indian laws and state or federal authority. Liberal votes are cast in favor of the government under cases concerning international law, or for the government's position in immigration disputes. Finally, votes in cases that challenge the Patriot Act are liberal when they support the government and conservative otherwise. These coding guidelines are useful for assessing the substantive policy implications of the multivariate analyses.

Measures of Interest

Dependent Variable

There are three possible outcomes that were considered when creating the dependent variable based on whether the policy is conservative, mixed, or liberal. It predicts the ideological direction of the opinion author's decision, and it was created from a categorical variable

representing case outcomes and whether the judge voted with the majority.³⁴ For example, criminal cases that are decided in favor of the defendant are coded “1”, while those that are decided in the favor of the prosecution are coded “0.” The observations have been pared down to only include decisions with a readily apparent ideological leaning. Therefore, cases that receive mixed policy outcomes and those that lack clear directionality are excluded. The guidelines employed by the multi-user database are very similar to the Spaeth database’s definitions of directionality.

Independent and Control Variables

The independent variables associated with race and ethnicity capture the demographic information of appeals court judges, while their ideology scores place their policy preferences in a quantifiable spectrum. The **Hispanic** variable captures whether the judge voting on a case is Latino/a by coding “1” for yes and “0” when the judge is any other race.³⁵ This demographic measure is essential for determining whether or not race effects are present. The reference category is comprised of Caucasian and African American male and female judges; Asian Americans were excluded from the sample due to a low number of observations in the years examined. **Hispanic** is carefully analyzed in each separated multivariate model to evaluate whether race effects are conditioned by the party of the appointing president. Additionally, the control **Africam** represents whether the judge is African American, and **Fem** signifies the female

³⁴ This definition is summarized in Table 4, while descriptive statistics are presented in Table 8.

³⁵ The number of Asian-Americans and Native Americans serving on the federal bench is either too small or non-existent, thereby preventing the statistical analysis of these groups (see Table 2 for the racial composition of the federal bench since President Carter left the White House).

status of a judge. The dichotomous variables for African American and female judges are coded in the same manner as the variable for Hispanic judges, and they appear in the pooled logit analysis.

Table 5. Variable Definitions and Coding			
<i>Variable</i>	<i>Definition</i>	<i>Coding</i>	<i>Notes</i>
Ideological Direction of Vote (Libconvote)	The ideological direction of the opinion author's decision; dichotomous dependent variable.	0: conservative outcome 1: liberal outcome	Variable created from the ideological coding of the first judge's vote; when Votej1 was coded as "1" or "3", Libconvote was coded in the appropriate direction. When Votej1 was coded as "2", it was excluded because the case had a mixed outcome or no clear liberal-conservative direction.
Hispanic Judge (Hispanic)	A judge who is Hispanic; dichotomous independent variable.	Excluded category: Caucasian judge 1: Hispanic judge	Variable created from the categorical Race variable obtained from the judge attribute dataset.
Africam	A judge who is African American; dichotomous independent variable.	Excluded category: Caucasian judge 1: African American judge	Variable created from the categorical Race variable obtained from the judge attribute dataset.
Fem	A judge who is female; dichotomous control variable.	0: male judge 1: female judge	Variable created from the categorical Gender variable obtained from the judge attribute dataset.
Criminal Case (Criminal)	Whether the case type is criminal; dichotomous	0: all other case types 1: criminal case type	Variable created from Geniss in the case level dataset that includes all criminal issue subtypes from the case level

	control variable.		dataset.
Lower Court Direction (Lowdir)	The tendency of a judge to affirm the lower court decision	0: conservative lower court decision 1: liberal lower court decision	Variable is coded as liberal in two instances: first, if the appeals court decision is also liberal and it affirmed the lower court finding; second, if the appeals court decision is conservative and it was reversing the lower court finding. The remaining cases are coded as conservative.
Ideology Score (JCSscore)	A measure of ideology using the Judicial Common Space scores; independent continuous variable.	-1: liberal 1: conservative	This continuous variable is coded along an ideological spectrum in which the cases fall somewhere between the extremes.

After running a logit model with all observations, the data are sorted on **Ptypres** to analyze separately in logit models observations by the party of each judge's appointing president. This variable serves as a control that will more precisely define the influence from the other independent variables in each cohort. A Democratic appointee is coded "1" and a Republican appointee receives a code of "2." The Democratic presidents in the sample include Lyndon Johnson, Jimmy Carter, and William J. Clinton. Republican appointees are judges selected by Richard M. Nixon, Ronald Reagan, George H.W. Bush, and George W. Bush. When the appointing president's party cannot be determined, the observation is coded "0." The two presidential party cohort models will be presented in the following section.

The variables **Criminal** and **Lowdir** control for criminal case type and lower court deference, respectively. These factors are known to exhibit an effect on judicial decision making. Since several issue areas are present in the sample, a control variable is needed to analyze a particular type of case. The dummy variable **Criminal** is coded as “1” when the case dealt with any subtype of criminal cases defined by the Phase III codebook, and “0” when the case concerns all other issue areas. Judges will be more likely to support the position of the government than the position of the defendant because defendants have an incentive to appeal cases that have little or no merit. **Lowdir** represents the tendency of a judge to affirm the lower court decision, and it represents the institutional norm of deference in the vertical hierarchy of the federal courts. The tendency to affirm is coded in terms of the directionality of the lower court decision, and I expect that judges will tend to affirm.

Finally, ideology is measured by **JCSscore** which ranges between [-1, 1], with pure conservatism represented by the positive bound and pure liberalism represented by the negative bound. Epstein et al.’s (2007) Judicial Common Space scores combine judicial Martin-Quinn scores and presidential NOMINATE Common Space scores, thereby producing an inter-branch estimation of ideology.³⁶ These scores allow scholars to compare judges’ liberal-conservative voting patterns over periods of time, across the circuits and other courts, and to actors in other branches of the federal government. Giles, Hettinger, and Peppers’ (2001) ideology scores also

³⁶ Full citation: Epstein, Lee, Andrew Martin, Jeffrey Segal, and Chad Westerland. 2007. “The Judicial Common Space.” *Journal of Law, Economics, and Organization* 23: 303-325.

measure the policy values of the most dominant actors in judicial selection – the president and home state senators. Ideology scores place appeals court judges on a spectrum occupied by other members of government, so the reliability of these ratings is bolstered by an external source of reference.

Race and Voting Behavior

President Carter’s attempts to diversify the federal judiciary are evident more than thirty years after they began. The sitting judges appointed by his predecessors were almost always traditional; the dataset contains no observations for African Americans, Asian Americans, or Hispanics who were appointed by Presidents Johnson, Nixon, or Ford.³⁷ Prior to the Carter administration, both Democratic and Republican presidents tended to appoint Caucasian males. In contrast, each administration successive to Carter has appointed cohorts that include Hispanics and African Americans.³⁸ Although Reagan appointees have the greatest number of judge-votes in the sample, the vast majority of them are Caucasian. In pursuing a program of diversification, Clinton appointees (and to a lesser extent, W. Bush appointees) represent the greatest gains made in minority representation.³⁹

Cross-tabulations of the variables provide a preview of the trends that will persist or fall away in later statistical analysis. Table 6 contains a bivariate analysis of **Libconvote**, the

³⁷ As the earliest administrations in the sample, they are the most likely to have few observations. So, the absence of non-traditional judges can also be attributed to sample decay as a result of judges retiring, being promoted, or being deceased. However, the first Hispanic judge was not appointed to the circuit courts until 1979.

³⁸ Asian Americans are only represented in President Clinton’s appointment program.

³⁹ For information on presidential appointees and gender diversity, see Appendix A.

ideological direction of a case outcome, and Race, which is the categorical variable used to create the **Hispanic** variable in the final version of the dataset. Race contains categories for whites, African Americans, and Hispanics.⁴⁰ The unit of analysis in this cross-tabulation is referred to as a “judge-vote” because each observation describes how a particular judge voted in particular a case. Examining the racial composition of the sample’s observations puts minority representation into perspective. Of the 1,420 judge-votes, the overwhelming majority (85.36 percent) belongs to Caucasian judges; African Americans have the highest proportion among the other groups at 7.21 percent. The percentage of Hispanics follows closely at 6.86 percent, while Asian Americans are allotted a mere .56 percent of the judge-votes in the sample.

Table 6. Bivariate Analysis of Libconvote and Race				
	<i>Race*</i>			
Libconvote	<i>African Amer. (N)</i>	<i>Hispanic (N)</i>	<i>White (N)</i>	<i>Total (N)</i>
Conservative	60.19% (62)	67.35% (66)	63.41% (773)	63.38% (901)
Liberal	39.81% (41)	32.65% (32)	36.59% (446)	36.62% (519)
Total	100% (103)	100% (98)	100% (1,219)	100% (1,420)
N=1420				
Pearson’s Chi ² =1.1133, Pr=0.573				
<i>Source: Multi-User Appeals Courts Database, 2003-2004</i>				
<i>* Observations for Asian American judges have been excluded from the analysis.</i>				

Next, the analysis groups judge-votes by race and the policy direction of their votes.

Sixty three percent of judge-votes cast by Caucasians support a conservative outcome, while the

⁴⁰ As mentioned before, there are too few observations to analyze Asian Americans under the liberalization hypothesis in a statistically sound manner. Furthermore, Native American judges are absent from the observations in the dataset. If the diversification trend continues in the lower courts, scholars will be provided an opportunity in the future to analyze these other groups under more rigorous conditions.

remaining votes support a liberal outcome. Only among Asian Americans is there evidence of liberal behavior. However, there are too few observations from this racial group in the sample for robust analysis, so those observations have been excluded from the sample. There is a modest difference among Hispanics and African Americans in terms of voting, while Caucasians occupy a middle ground between the two groups. Votes by Hispanic judges were slightly more conservative than that observed for Caucasians: 67 percent supported a conservative policy outcome. In contrast, African American judges' votes were more liberal with only 60 percent of their votes supporting a conservative outcome. Overall, appellate court judges tend to support conservative policies, although there were small differences at the margins among racial cohorts that were not statistically significant.

Do these preliminary findings persist when controlling for criminal cases? Table 7 presents the results of bivariate analysis using **Criminal** as a control, which yields 508 observations from the original set of 1,276 observations in the 2003-2004 case data. **Libconvote** is included again as a dichotomous dependent variable; a liberal treatment is one favors the defendant, while a conservative treatment favors the government. Across racial groups, judge-votes are conservative in 77.36 percent of the observations and liberal in the remaining 22.64 percent. The most striking trend is that Hispanic judges are much more conservative than African American judges. Controlling for criminal cases enhances the pattern that was seen above, as the conservatism of Hispanic judges appears to be stronger in criminal cases, with nearly twenty percentage points separating votes by African Americans and Hispanic judges. For comparative

purposes, the racial composition of judges who decide criminal cases is similar to the proportion of judges that examine all issue areas.

Table 7. Bivariate Analysis of Libconvote and Race, Controlling for Criminal Cases				
	<i>Race*</i>			
Libconvote	<i>African Amer.</i> (N)	<i>Hispanic</i> (N)	<i>White</i> (N)	<i>Total</i> (N)
Conservative	67.86% (19)	86.84% (33)	77.05% (339)	77.27% (391)
Liberal	32.14% (9)	13.16% (5)	22.95% (101)	22.64% (115)
Total	100% (28)	100% (38)	100% (440)	100% (506)
N=506 Pearson's Chi ² =3.4078, Pr=0.182				
Source: Multi-User Appeals Court Database, 2003-2004.				
* Observations for Asian American judges have been excluded from the analysis.				

Chapter 7

Multivariate Analysis

The 2003-2004 data contains a total of 1,276 observations regarding judge-level and vote-level information. Fewer observations exist in the sample than in the cross-tabulations because some were dropped when the directionality of the case could not be accurately identified. Descriptive statistics of the measures help to characterize the data. The means, minimums, and maximums for each variable are presented in the table below. **Libconvote** is the dependent variable on which the effect of the independent variables is measured. **Hispanic**, **Africam**, **Fem**, and **JCSscore** are the judge-level variables, and **Criminal** and **Lowdir** are the case-level variables. **Ptypres** has been excluded from the descriptive statistics because it is a categorical variable on which the logit analysis will be separated later.

Table 8. Descriptive Statistics of the Variables ⁴¹			
<i>Variable</i>	<i>Mean</i>	<i>Minimum</i>	<i>Maximum</i>
Libconvote	.3519	0	1
Hispanic	.0713	0	1
Africam	.0617	0	1
Fem	.1947	0	1
JCSscore	.0599	-.595	.5665
Lowdir	.2484	0	1
Criminal	.3683	0	1
			N=1,276
Source: Multi-User Appeals Court Database, 2003-2004.			

⁴¹ The categorical variable **Ptypres** is not included in Table 8 because it has no mean, minimum, or maximum.

The dichotomous variables range between [0] and [1], representing the presence or absence of various conditions. The measure of ideology is a continuous variable, so it naturally ranges between [-1] and [1]. Extreme outliers, or observations that are very different from others in the sample, can affect the reliability of statistical analysis. The range of **JCSscore** in the sample falls between [-.595] and [.567], indicating that there are no observations located at either bound of pure ideology. After estimating these effects in a model that pools all the observations, I separate the votes of judges according to the party of the appointing president. The split models allow me to test whether the effect of race is conditioned by the party of the appointing president. Paying particular attention to Hispanic identity, I can evaluate whether the effect of race on voting varies with the party of the appointing president.

Model Results

As in previous judicial politics studies, I employ the logit method of statistical analysis that is used when the dependent variable is dichotomous. To identify the presence or absence of race effects among Hispanic judges, votes by non-Hispanic judges serve as the reference category.⁴² The pooled model of all judge votes is presented in Table 9, and Tables 10 and 11 contain the Democratic and Republican separated models. The coefficient for each variable estimates the effect of the independent variable on the dependent variable, given that the other variables of interest serve as controls. Each estimate is evaluated for statistical significance through the *P*-values generated by the logit analysis. The level of significance is set at $\alpha = .05$, so

⁴² Non-Hispanic judges include Caucasians and African Americans.

a coefficient is considered statistically insignificant if $p > \alpha$. I will not draw the conclusion that a variable has some type of effect on **Libconvote** if it is insignificant. For significant estimates, I will conclude that a variable has some sort of effect on the dependent variable.

The pooled model of judges is presented in Table 9. In non-linear models, the proportional reduction of error (PRE) is used as a measure of goodness of model fit. The pooled model has a PRE of 13 percent, and the 65.51 percent of the observations are correctly classified. Also, the model's χ^2 test statistic is significant at $P > 0.0000$. The coefficients for the race and gender variables are negative and statistically insignificant. After taking into account other factors, I find no evidence of race effects among Hispanic judges because the coefficient is insignificant in the model. Judicial behavior for the demographic group of interest is not distinguishable from that of Caucasian and African American judges. However, the independent control variables **JCScore**, **Criminal**, and **Lowdir** are statistically significant in the predicted direction with sizeable coefficients. The coefficients for liberal-conservative scores and the criminal issue area are negative, while the lower court deference estimate is in the positive direction.

Table 9. Pooled Logit Model Likelihood of a Liberal Vote, US Courts of Appeals, 2003-2004						
<i>Variable</i>	<i>Coefficient</i>	<i>Std. Error</i>	<i>Z</i>	<i>P> z </i>	<i>95 percent C.I.</i>	
Constant	-.4836	.0944	-5.12	.000*	-.6687	-.2985
Hispanic	-.2485	.2488	-1.00	.318	-.7361	.2390
Africam	-.0014	.2397	-0.01	.995	-.4712	.4683
Fem	-.1908	.1595	-1.20	.232	-.5035	.1218
Criminal	-.9406	.1372	-6.86	.000*	-1.2095	-.6717
Lowdir	.9934	.1381	7.19	.000*	.7227	1.2640

JCSscore	-.6824	.1814	-3.76	.000*	-1.0380	-.3268
N=1,276			Pseudo R^2=0.0800			
LR Chi^2=131.05			Log-Likelihood=-761.37049			
Prob. > Chi^2=0.0000						
* Significant at the .05 level.						

The following analyses model votes separately by the party of the appointing president in Tables 10 and 11. These models help me to determine whether race effects among Hispanic judges are conditioned by party membership. In the bivariate cross-tabulations, Hispanic judges were found to be more conservative than both African American and Caucasian judges, and that the effect was intensified when controlling for criminal cases. In the pooled logit model, I found no statistically significant effect associated with race. It is also beneficial to assess whether the controls perform in the separated models as they did in the pooled model. The variable designating African Americans is excluded because there are not enough observations among blacks appointed by Republican presidents. For that reason, the reference category is simply “non-Hispanic” (Caucasians and African Americans). After a discussion of the results, I evaluate the results of each model according to the expectations defined in the research design.

Table 10. Logit Model Likelihood of a Liberal Vote, Democratic Circuit Court Appointees						
Variable	Coefficient	Std. Error	Z	P> z	95 percent C.I.	
Intercept	-.1625	.1889	-0.86	0.390	-.5327	.2077
Hispanic	-.1851	.3677	-0.50	0.615	-.9058	.5356
JCSscore	.2428	.5420	0.45	0.654	-.8195	1.3052
Criminal	-.9170	.2074	-4.42	0.000*	-1.3234	-.5105
Lowdir	.5679	.1948	2.92	0.004*	.1861	.9497
N=521			Pseudo R^2=0.0471			
Chi^2=31.19 Prob. > Chi^2=0.0000			Log Pseudo-Likelihood=-333.9616			
* Significant at the .05 level.						

By the end of the time period sampled, the White House had been occupied by a Republican more often than by a Democrat, so ostensibly, there are more judges appointed by the former party than by the latter. The Democratic model has 521 observations and the Republican model contains 751. The unit of analysis is the ideological direction of the vote of a judge sitting on a three-member appeals court panel. In the Republican and Democratic models, I explore the possibility that the effect of race varies with the party of the appointing president. The PRE for the model of Democratic appointees is 10 percent, while the percent of observations that are correctly classified is 64.11. The PRE for the model of Republican appointees is 13 percent, and the model predicts 74.17 percent of the observations correctly. The chi-square test statistics for both models are statistically significant.

Table 10 presents the results of the logit analysis of judges appointed by Democratic presidents. Judges in this group were appointed by Presidents Lyndon B. Johnson, Jimmy Carter, and William J. Clinton. The estimates associated with voting by Democratic appointees support the finding from the pooled model that race is not related to voting. The coefficient for Hispanic judges is small, negative, and statistically insignificant. As in the pooled model, statistically significant effects are found for the controls **Lowdir** and **Criminal**. In this model, the **JCScore** estimate does not inform our understanding of the relationship between race and liberal-conservative voting directions. The effect of ideology is signed in the wrong direction and is not statistically significant, suggesting few, if any, ideologically based differences account for variation in voting behavior by appeals court judges appointed by Democratic presidents.

Table 11. Logit Model Likelihood of a Liberal Vote, Republican Circuit Court Appointees						
Variable	Coefficient	Std. Error	Z	P> z	95 percent C.I.	
Intercept	-.3930	.1537	-2.56	0.011*	-.6942	-.0918
Hispanic	-.1504	.2062	-0.73	0.466	-.5544	.2537
JCSscore	-1.3616	.4357	-3.12	0.002*	-2.2155	-.5076
Criminal	-.9608	.1668	-5.76	0.000*	-1.2877	-.6340
Lowdir	1.3560	.1532	8.85	0.000*	1.0557	1.6563
N=751			Pseudo R^2=0.1092			
Chi^2=124.07 Prob. > Chi^2=0.0000			Log Pseudo-Likelihood=-419.1503			
* Significant at the .05 level.						

Table 11 contains the results of the logit analysis of Republican appointees. The Republican model fares better under statistical analysis, although the evidence of race effects is absent in this model too. The judges in this group were appointed by Presidents Richard M. Nixon, Gerald Ford, Ronald Reagan, George H.W. Bush, and George W. Bush. **Hispanic** is in the negative direction, but it is not statistically significant. The **JCSscore**, **Lowdir**, and **Criminal** measures are statistically significant, although they vary in their strength and directions. Ideology is large and in the negative direction, so liberal Judicial Common Space scores increase the possibility of a judge voting liberally. Even though liberal voting behavior is much more likely when the lower court also supported a liberal outcome, judges will be less likely to support a liberal outcome when hearing criminal cases under appeal.

Interpretation of Results

Although the bivariate analysis suggested that votes by Hispanic judges were more conservative than voting by other racial and ethnic groups, the multivariate model did not find

support for that expectation. Voting behavior by Hispanic judges was not distinguishable from members of the bench who are non-Hispanic. In the pooled model, Latino/as are as likely to vote in a given ideological direction as their Caucasian and African American colleagues. When controlling for the party of the appointing president, neither cohort produced any evidence of race effects. The Hispanic race variable was insignificant in both the Democratic and Republican models. The absence of race effects among appointees from one political party is congruent with the lack observed among appointees from the other party.

In the separated models, I expected that the likelihood of a liberal vote would increase when the judge was a Hispanic appointed by a Democratic president, and that the likelihood of a liberal vote would increase when a judge was a Hispanic appointed by a Republican president. However, the variable for Hispanic judges was not significant in either of the separated models. Since the majority of criminal cases are filed by desperate defendants exhausting the appeal process, I expected that judges, regardless of race or the party of the appointing president, would support the government's position. Accordingly, the likelihood of a liberal vote would decrease in criminal cases. As predicted, the criminal case coefficient was negative, strong, and statistically significant in the pooled and separated models. To assess the tendency to affirm, I expected that judges will be more likely to support a liberal outcome when the lower court also supported a liberal outcome. The coefficient for the affirm variable was positive, strong, and statistically significant in all the models. Finally, I expected that as a judge's ideological predisposition becomes more conservative, the likelihood of a liberal vote would decrease. As a result, the coefficient for the Judicial Common Space score of a judge would be strong in the

negative direction and statistically significant. This result was observed in the pooled model and the Republican model, but not in the Democratic model.

By analyzing votes by judges according to their appointing president's party separately, I have presented a more nuanced assessment of the results than what would be possible if the party cohorts had been combined under one analysis.⁴³ The influence of some variables does not persist across political lines, while others are robust regardless of the party affiliation of the appointing administration. A judge's race has no effect on voting, regardless of the party of the appointing president. The differences in voting that were observed among Caucasians, African Americans, and Hispanics in the cross-tabulations do not hold up under multivariate analysis. Ideological variation among Hispanic judges should not be surprising. The Fifth Circuit offers an illustration of two judges who share demographic features but not policy preferences. Judge Emilio M. Garza was appointed by President George H.W. Bush in 1991, and Judge Reynaldo Guerra Garza was appointed by President Jimmy Carter in 1979, and served until his death in 2004. The case-level variables are significant across all three models, so the influence of the norm of lower court deference and criminal cases on voting outcomes is reliable under a variety of circumstances.

⁴³ Another logit analysis of the 2003-2004 appeals court cases did not account for whether a judge's appointing president was a Democrat or a Republican. In those results, the proportional reduction in error is 14.03 percent, while 69.74 percent of the outcomes were correctly predicted. The race variable was insignificant, while the lower court deference, ideology score, and criminal case controls were significant at $P = 0.000$.

Chapter 8

Conclusion

This study examines the possibility that a judge's race/ethnicity influences his or her decision making in the circuit courts. Hispanics are a rapidly growing portion of American society, and their representation in the U.S. appellate system has benefited from the recent administrations' commitments to judicial diversification. I constructed this analysis to test whether Hispanic judges engage in representative behavior in order to further their group interests. While a preliminary bivariate analysis suggested that there were variations in liberal-conservative voting among Caucasian, African American, and Hispanic judges, race effects were not present in the multivariate analyses. An examination of the judges' votes, sorted by ideological affiliation of the appointing president, determined that the lack of differences observed between Hispanic judges and their colleagues held when examining Democratic appointees and Republican appointees separately. Judicial decision making among Hispanic judges does not distinguish them as a group from African American and Caucasian judges in the U.S. Courts of Appeals. However, this study joins others in finding that judges are more likely to vote in favor of the government, and that lower court deference is a common institutional norm.

The model results do not support a purely ideological model of judicial decision making. While significant, they are not highly predictive of outcomes according to the proportional reduction in error statistic generated for the pooled and logit models. Judges do tend to vote according to their policy preferences, but their decision making is also influenced by case-level factors. The absence of race effects that was observed in the clustered and pooled models

indicates that voting behavior is not based on demographic features either. The analysis illustrates that the appeals courts tend to be deferential to the decisions of trial court judges, particularly in appeals brought by criminal defendants. Members of the appellate bench usually side with the prosecutorial party or government agency rather than the defendant. Furthermore, Hispanic judges are more similar to their traditional colleagues than different: there were no race effects found in either of the two models.

While they are unevenly distributed across the thirteen circuit courts, the Obama administration has continued the levels of Hispanic representation begun by previous administrations. According to Solberg (2012), President Obama has employed a pure replacement strategy regarding his four Hispanic appeals courts judges. His maintenance approach to judicial diversity in the lower federal courts has neither increased nor decreased the number of judgeships occupied by Hispanic circuit court judges. However, on the U.S. Supreme Court, Obama has created a Hispanic seat through the appointment of Associate Justice Sotomayor in 2009. The President's election to a second term in 2012 will provide more opportunities for researchers to examine his commitment to diversification of the courts.

Associate Supreme Court Justice Sotomayor notes that people of all races are subjected to various cultural and societal influences on their identity. In this sense, a nontraditional judge is as likely to vary in his or her policy preferences as a Caucasian or African American judge. She acknowledges that some life experiences that are unique to minority groups affect judicial decision making, but that judges must strive for impartiality by applying their perspective "when those opinions, sympathies, and prejudices are appropriate" (Sotomayor 2002: 93). In failing to

reject the hypothesis that race effects exist on the U.S. Courts of Appeals, this analysis suggests that judges of different racial and ethnic groups tend to be more alike than different in their decision making.

Diversity scholars have long been concerned with defining and capturing the precise nature of representation. Substantive representation manifests differently in the elected branches than it does in the judicial branch, where representation is less direct due to the judicial appointment system. However, we can borrow a lesson from the Congressional scholarship in noting that the relationship between descriptive representation and substantive representation is indirect. Future research can assess whether race effects are present in other issue areas, or if judges tend to be alike regardless of the policy at hand. Additional years of data will determine whether the findings of this study are temporally robust, or if they disappear as future administrations leave their mark on the federal judiciary.

The results of this study indicate that liberal-conservative voting patterns are not linked to race, but rather to case features like criminal issues and organizational norms like deference to the lower courts and the tradition of unanimity. Additionally, the party of the appointing president conditions the significance of variables in multivariate analysis. New scholarship can evaluate the decision making by Obama and W. Bush appointees to test whether current null findings will persist among these appointees. There will be opportunities to increase diversity on the federal bench through judicial vacancies (and perhaps the creation of new judgeships) before the end of the Obama administration in 2016. Researchers should also examine newer W. Bush appointees using the multi-user dataset when Phase III of the multi-user database becomes

available. With case data through 2010, scholars can revisit the original research question I posed on the judicial decision making of Hispanic appellate court judges.

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