

**THE IMPACT OF GENDER AND RACE IN THE DECISIONS OF JUDGES ON  
THE UNITED STATES COURTS OF APPEALS**

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**ABSTRACT:** Studies concerning judicial behavior have made substantial progress over the last few decades both in theory and empirical propositions. However, compared to research on the U.S. Supreme Court, lower federal court research is less well-developed. The present study seeks to advance our knowledge of lower court decision-making, specifically in the area of gender and race effects on judicial behavior. Research in this area of judicial politics usually focuses on attitudinal difference, differences in socialization, and differences in judicial recruitment between men and women in relation to voting behavior. Unlike previous empirical analyses, the present study centers on the influence that female, as well as, minority judges on the U.S. Courts of Appeals may exert over their colleagues, by focusing on the votes of the appeals court judges sitting on each “appellate court panel” that issued each decision. Utilizing the “appellate court panel” as the unit of analysis, we attempt to assess the influence that female and minority judges have over the policy outputs of the courts of appeals in criminal procedure and civil rights and liberties cases from 1977 to 1996. The results indicate that race is not a factor in predicting voting behavior by courts of appeals judges. However, we *do* find that women judges in the courts of appeals tend to vote more conservatively in criminal procedure cases and more liberally in civil right and liberties cases than their male counterparts. More importantly, the results of the models provide evidence that the presence of one or more females on an appeals court panel tend to increase the probability that their male colleagues will also support the conservative position in criminal procedure cases and the liberal position in civil rights and liberties cases. Furthermore, we find the influence of female colleagues to be more pronounced on issues that are of the utmost concern to women and the community.

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## Introduction

Studies concerning judicial behavior have made substantial progress over the past few decades both in theory and empirical propositions. However, in comparison to the U.S. Supreme Court, lower federal appellate court research is less well-developed. The existing research on lower courts suggests that these judges are responsive to a variety of factors in their legal, social, and political environments. While political ideology<sup>1</sup> appears to be the most important determining factor in predicting how a judge will vote (see, Carp & Rowland 1983; Carp & Stidham 1998; Rowland & Carp 1996; Songer & Davis 1990), studies have also shown (to a varying degree) that gender and race matters (see, for example, Gruhl, Spohn & Welch 1981; Davis, Haire & Songer 1993, Songer, Davis & Haire 1994; Songer and Crews-Meyer 2000). Although previous empirical analyses have found gender and racial differences in policy-oriented voting, only a few studies have examined whether the presence of female or minority judges on the bench affect the voting behavior of their judicial colleagues (see, Gryski, Main, and Dixon 1986; Songer and Crews-Meyer 2000). In the present study we build on previous research by examining the impact of judge gender and race on decision-making by the U.S. Courts of Appeals. In particular, using the votes of judges on the various appeals court panels, we construct two models of appeals court decision outcomes in the broad policy areas of criminal procedure and civil rights and liberties.

While there have been a few studies conducted concerning the impact of gender and race on judicial voting behavior, those that do exist show mixed results. Some studies find gender and race to be important in judicial decisions on particular types of cases (see, for example, Davis, Haire & Songer 1993; Songer, Davis & Haire 1994; Gruhl, Spohn & Welch 1981), while others do not (see, for example, Dorris & Carp 1997; Stidham & Carp 1997; Walker & Barrow 1985). Clearly this is an important issue for recruitment literature continues to examine how well women and minorities are represented by the federal courts, and many look at this issue through the background characteristics of the judges appointed (Goldman 1981; Goldman & Slotnick 1999;

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<sup>1</sup> References to ideological groups are significant indicators of issue attitudes because almost every issue has an identifiable liberal or conservative position (Jacoby 1991).

Goldman & Saronson 1994). Furthermore, many judicial scholars also assume gender and race to matter in that many include these variables in integrated models of judicial behavior, to control for their possible effects (see, for example, Songer & Johnson 2000; Rowland & Carp 1996).

Studies of gender and race in the field of judicial politics have largely focused on the various roles, particularly that female judges, might play in their decision-making patterns (Allen & Wall 1993; Martin 1993a,b). Beginning in 1982 with Carol Gilligan's psychological study of feminist values (Gilligan 1982), several studies have attempted to determine whether or not female and minority judges vote in patterns that would be representative of their gender or race in society as a whole. Various studies have attempted to determine whether female and minority judges act as representatives of their respective groups in their decisions (Allen & Wall 1993; Martin 1993a Segal 2000a), whether they act as tokens by not voting differently than their white male counterparts (Allen & Wall 1993); whether they act as outsiders who are more liberal in decisions across-the-board (Abrahamson 1993); or for females, whether they behave in such a way that can be construed as a "different voice" role (Aliotta 1995; Davis 1993; Martin 1993b; Sherry 1986; Segal 2000b).

### **Assessing the Impact of Gender and Race in Courts of Appeals Decision-making**

The present study seeks to discover the relative impact of gender and race on the decision outcomes of the U.S Courts of Appeals, by building on previous analyses of the factors that affect judicial decision-making by courts of appeals judges. However, the essential purpose of the current study is not only to determine differences in the voting behavior of appeals court judges that are members of different gender and racial groups. In addition, we also attempt to assess the influence that female and minority appeals court judges may exert over the voting behavior of their judicial colleagues, and whether there are any variations in such influence across different issue areas. Although the number of studies that have been conducted over the years concerning the role of judge gender or race in voting behavior is small, we rely on literature concerning voting behavior on the

bases of gender and race in general, and develop several hypotheses in the paragraphs that follow.

In previous empirical analyses, several scholars have found evidence of differences in voting behavior by women and men. With Congress, studies of gender voting patterns reveal differences in the behavioral patterns of women compared with males. For instance, Leader (1977) found differences in the decision-making of female and male legislators, with women being more liberal than their male counterparts in the areas of social welfare and defense spending (Leader 1977). Welch (1985), also focusing on Congress, found that women were more likely to cast liberal votes than men, but that these differences had diminished over time. While Thomas and Welch (1991) found a contradictory result in their study of state legislators, in which they found differing policy priorities for males and females.

In relation to the courts, previous research has illuminated the existence of gender differences between judges on all levels of the judiciary, as well as, across a range of issues (see, for example, Gryski et al. 1986; Songer et al. 1994; Songer and Crews-Mayer 2000). In particular, scholars have found evidence that female state supreme court judges tend to vote more liberally than male state supreme court judges in death penalty and obscenity cases (Songer and Crews-Meyers 2000; see also Allen and Wall 1993). In a study examining Carter federal district court appointees, differences were found between male and female judges in personal liberty claims (Walker & Barrow 1985). Furthermore, examining federal district court cases over the period of 1977 to 1995, Wells & Stidham (2000) found differences attributable to gender in women's rights cases and employee versus employer cases.

By the same token, scholars focusing on race have shown differences in legislative decisional patterns. Focusing on votes of Congress members in the Civil Rights Acts, the Voting Rights Acts, and the Fair Housing Act of 1988, Whitby (1997) concluded that the race of the legislator does make a difference in legislative voting; however, he notes that region and party seem to be better predictors of legislative behavior than race does. Furthermore, criminal sentencing studies comprise a large portion of the literature on minority judges. That is, some studies suggest that African-American judges may use

their judicial discretion to rectify discrimination in the sentencing of convicted blacks (Welch et.al 1988; Uhlman 1978).

In general, the previous literature above suggests that there are important differences in voting behavior by women and men, as well as, by minorities and non-minorities. Based on such evidence, we hypothesize that female and minority judges will be more liberal in their decision-making than their male and Caucasian colleagues (respectively) in the issue areas we include in our analysis: criminal procedure and civil rights and civil liberties cases. It is predicted that female and minority appeals court judges will “be more protective of civil liberties because they are more likely to have particular empathy for individuals who are disadvantaged (as women and minorities themselves have been) in American society” (Songer et al. 1994: 429). Thus, it is our contention that both female and minority judges will tend to support those persons whose rights have been denied or infringed upon in some manner.

In contrast, we hypothesize that female judges will be more conservative in their decision-making in criminal procedure cases. Feminist legal theory informs us that women tend to support issues that are in of best interest of society (for example, see Sherry 1986). Thus, it is our contention that female appeals court judges will be less likely to support the positions of criminal defendants, for “to support the claim of a criminal defendant would conflict with the interests of the community” (Songer et al. 1994: 429).

*Hypothesis 1: Female appeals court judges are more likely to make a liberal (conservative) decision than their male colleagues in civil liberties (criminal procedure) cases.*

*Hypothesis 2: Minority appeals court judges are more likely to make a liberal decision than their Caucasian colleagues in civil liberties and criminal procedure cases.*

Our next set of hypotheses concerns the influence of female and minority judges on their colleagues on the panel in the cases. At least two previous studies have found evidence to support the assertion that the presence or absence of female colleagues on the bench affects court outcomes. In particular, these studies have found that courts with one or more female judges on the bench were more likely than all male courts to support

liberal decisions in gender discrimination cases (see, Gryski et al. 1986), as well as, death penalty and obscenity cases (see, Songer and Crews-Meyer 2000). Based on such previous empirical evidence we hypothesize that the presence of one or more female colleagues on an appeals court panel will influence the decisions of other judges on the panel in the cases, leading to more liberal outcomes in civil rights and liberties cases and conservative outcomes in criminal procedure cases. In addition, we hypothesize that the presence of one or more minority colleagues on an appellate court panel will lead to more liberal decisions in both civil rights and liberties and criminal procedure cases.

*Hypothesis 3: The presence of one or more female colleagues on the panel is more likely to lead to liberal (conservative) outcomes in civil rights and liberties (criminal procedure) cases.*

*Hypothesis 4: The presence of one or more minority colleagues on the panel is more likely to lead to liberal outcomes in civil rights and liberties and criminal procedure cases.*

Furthermore, previous empirical analyses have found women to be supportive of issues that are of the utmost concern to women and the community than men (see for example, Saint-Germain 1990; Thomas 1991, 1994; Thomas and Welch 1991; Songer et al. 1994; Bingham 1997; Dodson 1998; Songer and Crews Meyer 2000). For example, in their studies, Saint-Germain (1990) and Thomas (1991) found women legislators sponsored more legislation dealing with feminist issues, and as the percentage of women increased, the number of bills enacted dealing with feminist issues also increased. Based on such previous evidence, we hypothesize that female appeals court judges are more likely to influence their colleagues in cases involving women policy issues (i.e. gender discrimination in employment), as well as, minorities in cases more important to minority groups (i.e. segregation).

### **Data and Methods**

In order to test the above hypotheses, we utilize data on policy outputs by the U.S. Courts of Appeals in the two policy areas of criminal procedure and civil rights and

liberties for the years of 1977 to 1996. The data was compiled from a random sample of 30 cases per year per circuit across each issue area from the *U.S. Courts of Appeals Database*, as well as, from searches conducted on Westlaw. As the unit of analysis, the present study adopts the votes of the appeals court judges sitting on each “appellate court panel” that issued each decision for twelve of the thirteen U.S. Circuit Courts of Appeals, with the exclusion of the Federal Circuit Court of Appeals<sup>2</sup>. However, the models below include only decisions by three-judge panels, with the exclusion of cases that were decided *en banc* (we leave such cases for future analyses). Furthermore, we also exclude from the analysis the votes of judges sitting by designation from other courts, who only participate on a temporary basis on appeals court panels. Thus, the sample data for the models yielded 4286 appeals court panels and 11636 judge votes for criminal procedure cases, and 938 appeals court panels and 2514 votes for civil right and liberties cases suitable for analysis.

The dependent variable for the models is a measure of judge-liberalism for each judge sitting on a three-judge panel for each case. That is, we use the direction of each judge’s vote in each case. A liberal vote is coded “one”, and a conservative vote is coded “zero”. To define the ideology of judges’ votes, we relied on the standard definitions of “liberal” and “conservative” used in previous empirical analyses of lower federal court behavior (e.g. Carp and Rowland 1983; Rowland and Carp 1996; Songer et al. 2000). Specifically, the directionality of the judges’ decisions in the cases are categorized as “liberal” if the vote in the case is in favor of the criminal defendant; if the decision supports a petitioner in a racial discrimination case; and decisions that support a person claiming a violation of Constitutionally protected rights.

We include in our models the independent variables suggested by our hypotheses. All measures for the gender and race of the judges were derived from the *Multi-user Database on the Attributes of U.S. Appeals Court Judges, 1960-1999*. To test for any differences that may exist between the voting behavior of female and male judges, we construct the variable **Judge Gender**, which takes on the value of “one” for female judges, and “zero” for male judges. To test for the effects of race on judicial decision

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<sup>2</sup> On account of the lack of data availability, decisions by the Federal Circuit Court of Appeals is excluded from the model.

outcomes, we constructed the variable *Minority*, which is coded “one” for judges that are African-American, Hispanic, or Asian, and “zero” otherwise<sup>3</sup>.

To explore the effects of female appeals court judges on their male counterparts, we construct the variable *Female Colleague*, which takes on the value of “one” if a given judge (either male or female) has one or more colleagues on an appeals court panel that is a woman, and “zero” for panels consisting of all males. Therefore, a panel that contained two female colleagues would be coded “one” for all judges on the panel. To test for the effects of minority colleagues, we constructed the variable *Minority Colleague*, which takes on the value of “one” if a given judge (either male or female) has one or more colleagues on the panel that is African American, Hispanic, or Asian, and “zero” for panels consisting of all Caucasian judges.

Furthermore, we incorporate a series of dummy variables, to test for the effects of the issues in the cases. The issues are based on the codes for the CASETYP1 category label for issue codes in the *U.S. Courts of Appeals Database*<sup>4</sup>.

In addition to the independent variables suggested by our hypotheses, we also incorporate several control variables into the models. We include a control for the influence of changing Supreme Court precedents (*SC Precedent*) on the decisions of courts of appeals judges, by computing the percentage issue-specific liberal decisions made by the Court for each year in our analysis lagged by one year. In addition to Supreme Court precedents, the models also control for judicial preferences (*Judge Ideology*), using a measure of whether each judge in the model identifies with the Democratic Party (coded one) or the Republican Party (coded zero). Finally, to control for the influence of the various appeals court circuits on each judge panel within their respective circuit, we construct the variable (*Circuit Preferences*) by computing the ideological score for the circuit medians, using the presidential common space Nominate scores (by Poole and Rosenthal 1997) of the appointing president of each judge in the

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<sup>3</sup> Since, there have only been seventeen African-American, eleven Hispanic-American, and three Asian-American judges appointed to the U.S. Courts of Appeals from the period of 1977 to 1996. Therefore, we do not separate these racial groups into three different variables for the final estimated models.

<sup>4</sup> There was no significant difference found between different case types for criminal procedure cases. Thus, case facts for the area of criminal procedure are excluded from Table 1.

circuit. The presidential nominate scores (and thus the circuit medians) have been multiplied by -1 so positive scores are Democrats.

In sum, both models below include identical measures, with the exception of the issue variables that are added to the model for civil rights and liberties cases (see, footnote 5). Both models presented below contain measures pertaining to: judge gender; judge race; a measure of female colleagues on the deciding panel; a measure of minority colleagues on the deciding panel; appeals court circuit preferences, partisan identification of judges, and a measure of precedents established by the Supreme Court for each issue area for each year.

### **Evidence of Gender and Race Effects in U.S. Courts of Appeals Criminal Procedure and Civil Rights & Liberties Cases**

Since both of the models in this study contain a dichotomous dependent variable, the parameters for each issue area are estimated via logistic regression. Logistic regression is based on Maximum Likelihood Estimation (MLE), which estimates the parameters of a model in terms of the contribution that each of the independent variables make to the probability that the dependent variable falls into one of the two specified categories, which in this case is liberal or conservative. For each independent variable, a MLE is calculated along with its corresponding standard error. Each MLE represents the change in the logit function that results from one unit change in the dependent variable.

#### **[Table 1 About Here]**

The results of estimated models are in Table 1. The results in the Table clearly provides continued support for the idea that the decisions of lower federal appellate court judges are best conceptualized as the result of the often conflicting demands places upon the judges from the legal and the democratic subcultures (see, for example, Richards and Vines 1970; Songer and Haire 1992; Songer Davis & Haire 1994; Songer Segal and Cameron 1994;). As the estimated coefficient in the Table illustrate, doctrine established by the Supreme Court is significant to appeals court judges in both criminal procedure and civil rights and liberties cases. The significant negative coefficient for the variable

*SC Precedent* in both models indicate that the decisions of the Court tend to lead to more conservative decisions by courts of appeals judges. Although the Supreme Court is found to exert influence over the behavior of appeals court judges in both issue areas, the variables of *Judge Ideology* and *Circuit Preferences* were found to exert influence over these tribunals in only one policy area. In particular, the ideological preferences of appeals court judges were found to be significant only in the policy area of criminal procedure. The significant positive coefficient for the variable *Judge Ideology* in the model indicates that appeals court judges are highly influenced by their own personal ideological preferences when deciding criminal cases. In other words, the variable indicates that Democratic appeals court justices tend to be more liberal in their decision-making, supporting the positions of criminal defendants than their Republican colleagues. Furthermore, the variable *Circuit Preferences* was only found to be significant in the model for civil right and liberties cases, indicating that the preferences of the various appeals court circuits leads to more liberal decision by appeals court judges in this policy area.

To turn to the variables of interest, as predicted, the gender of courts of appeals justices does exert an impact on the policy outputs of these tribunals. For instance, the resulting estimates of the *Judge Gender* variable for both models show that female judges on the appellate panel tend to vote more conservatively in the area of criminal procedure, and more liberally in the area of civil rights and liberties than male appeals court judges. Such evidence indicates that the women that are appointed to the courts of appeals tend to favor persons filing suits on the basis of infringement upon their civil rights. However, the model for criminal procedure cases shows that female courts of appeals judges tend not to favor criminal defendants that file suits. Furthermore, the results for both models show that adding the variable *Minority* to the models does not add to the predictive power of voting behavior in either issue area. Consequently, the resulting coefficient for the variable in the models was small and statistically insignificant. The models were estimated both with and without the *Minority* variable and showed no significant changes in the percentage of cases predicted correctly by the model or the reduction in error. Thus, we conclude that minority courts of appeals judges

do not vote differently than Caucasian judges in the areas of criminal procedure and civil rights and liberties.

Furthermore, the variable *Female Colleague* was found to be significant in both models. As the resulting estimates in Table 1 show, the presence of female judges on appeals court panels leads to more conservative outcomes in the area of criminal procedure, and liberal outcomes in the area of civil rights and liberties by the various appeals court panels. Such evidence indicates that female judges on the appellate panel tend to exert a great deal of influence over the voting behavior of their male colleagues across various issue areas, leading male judges to vote more conservatively in criminal procedure cases and more liberally in civil rights and liberties cases than they would otherwise if the appellate panel consisted of all males. In contrast, however, the variable *Minority Colleague* demonstrates that the presence of minority judges on an appeals court panel exerts no effect over the voting behavior of Caucasian appeals court judges.

Finding evidence that female appeals court judges exert influence over the voting behavior of their male counterparts on appeals court three-judge panels, we attempted to assess if the magnitude of this influence was greater in some issue areas than others. Therefore, we created several dummy variables based on various issue areas consisting of: *Segregation*, *Gender Discrimination in Employment*, and other cases involving *Race and Gender Discrimination*, and *Voting Rights* as the default category. As the resulting coefficients in Table 1 show, women tend to exert more influence over cases involving gender discrimination in employment by women, and in other issues of race and gender discrimination in suits raising constitutional and statutory claims- such as cases involving opposition to government economic regulations. Thus we conclude, in relation to the issues in the cases, that the influence of female colleagues on courts of appeals panels is most significant in cases involving issues that are of concern to women.

### **Conclusion**

In this study, we set out to examine three main effects of gender and race on the voting behavior of U.S. Courts of Appeals judges. First, we attempted to assess whether there were any differences in the voting behavior of female judges and male judges, or

between minority judges and non-minority judges. Second, if differences do exist in the voting behavior of these groups, we attempted to discover whether such differences would lead to the presence of women and minority judges exerting influence over the behavior of the respective colleagues. Finally, we attempted to analyze if the impact of judge gender and race varied across different issue areas.

The results of the models indicated that race is not a factor in predicting the voting behavior of courts of appeals judges in criminal procedure or civil rights and liberties cases. This finding is similar to that of previous studies concerning the impact of race on lower court decision-making. For instance, Walker and Barrow found no differences between minority and non-minority Carter appointees in the areas of personal liberties, criminal rights, and women's policy issues (Walker and Barrow 1985). While Segal (2000a) found few differences race differences in the federal district courts within the areas of minority issues, criminal rights, economic regulation, and personal liberties.

Although race was not found to be significant to judicial voting behavior, the results of our analysis found that judge gender is a significant factor in predicting the vote. In particular, we found that female appeals court judges tend to vote more conservatively in criminal procedure cases, but more liberally in civil rights and liberties cases than their male colleagues. In addition, this study provides evidence that male appeals court judges on three-judge panels with women colleagues were more likely than male judges on "all male panels" to support the conservative position in criminal procedure cases and the liberal position in civil rights and liberties cases.

The results of our models provide further evidence that judge gender is an important factor in determining the voting behavior of courts of appeals judges (see, Songer et al. 1994). The results are particularly interesting in that the effect of judge gender was found to vary across issue area. In particular, the impact of judge gender was found to matter more in cases traditionally considered to be "women issues", such as the discrimination against women in the workplace. Although our analysis is based on two broad issue areas, namely criminal procedure and civil right and liberties cases, the results suggest that the appointment of more women to the bench will exert a great deal of influence on the decision outcomes of federal appeals courts.

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