The Hierarchical Influence of Courts of Appeals on District Courts

Christina L. Boyd

ABSTRACT
What factors explain when federal trial court judges will be influenced and constrained by their direct superiors in the judicial hierarchy? To empirically test this hierarchical relationship, this study utilizes an original database of cases terminated in 29 federal district courts from 2000 to 2004 and a research design that naturally incorporates hierarchical interactions through a focus on cases that were appealed to the U.S. courts of appeal and later reversed and remanded. After controlling for litigant, judge, political, and case characteristics, the results indicate that the likelihood of a district court case having an altered outcome after circuit court intervention is greatly affected by the content and context of the supervising circuit panel’s opinion. These results have implications for the function and constraining ability of the judicial hierarchy and provide new insight into how judging significantly differs by court level.

1. INTRODUCTION
As the occupants of the lowest courts in the federal judicial hierarchy, how do federal trial court judges make decisions? Are they, like their appellate court brethren, ideological decision makers, frequently working to further their personal preferences? Or, instead, do these judges judge with

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other concerns at the forefront of their minds, including their place in the judicial hierarchy and their duty to follow their judicial superiors? These sorts of questions, although regularly and frequently debated for U.S. Supreme Court justices and U.S. courts of appeals judges, remain largely unsettled for federal district judges. Despite this, their answers have important implications for those working in, encountering, or impacted by federal trial courts.

It can be argued that no judges face more, possibly competing, constraints on their decision-making behavior than federal district judges. These trial court judges preside over a complex, dynamic case environment that presents multiple decision-making opportunities per case (Kim et al. 2009; Williams and George 2013). Unlike appellate court judges, federal trial court judges’ decisions are subject to the possibility of several rounds of appellate review and bound by relevant precedent derived from hierarchical superiors (see, for example, Hettinger, Lindquist, and Martinek 2006). It should therefore come as no surprise that recent empirical work has downplayed the role of ideology in district judges’ decision making (Zorn and Bowie 2010) while promoting the importance of further examining the role of other behavioral considerations—such as the potentially constraining role of judges above them in the judicial hierarchy—for these important trial court judges (Randazzo 2008; Haire, Lindquist, and Songer 2003).

Scholars have found numerous pieces of evidence across the U.S. judiciary to support the presence of hierarchical influence, responsiveness, and compliance among lower-court judges and their judicial superiors (for example, Benesh and Reddick 2002; Klein 2002; Westerland et al. 2010; Kastellec 2011; Wasby 1970). While their work is voluminous, the bulk of it focuses on the U.S. Supreme Court as the hierarchical superior and courts of appeals and district courts as the inferior institutions. Indeed, comparatively little empirical evidence exists regarding the hierarchical relationship between federal courts of appeals and district courts. Despite this lack of focus, this lower-court hierarchical relationship is increasingly critical in the federal court system, in part because of the hundreds of thousands of cases now terminated in federal district courts each year and the federal courts of appeals’ role as “the de facto (if not the de jure) venue for final appellate review” (Hettinger, Lindquist, and Martinek 2006, p. 89). In short, whether and to what degree district judges are influenced by their supervising appellate courts can broadly impact litigants, judges, lawyers, and the public in terms of actions, perceptions, and shaping the law.
In this article I theorize that district judges are greatly affected in their decision making by their place at the bottom of the federal judicial hierarchy and their role as agent to their courts of appeals’ colleagues. To examine this, I focus on a set of cases that naturally interact with the judicial hierarchy via a district court decision, an appeal to the circuit court, and a reversal and remand from the circuit court that then sends the case back to the district court for further processing. My empirical test utilizes an original database of cases terminated in 29 federal district courts from 2000 to 2004. The results indicate that district judges are most likely to alter their decision making when their hierarchical principals, circuit court judges, issue strong, published opinions that unambiguously indicate their preferred outcome and course of action for the case. Further analysis of these findings reveals that circuit judges may anticipate the lower court’s response on remand and, at times, adjust their opinion content accordingly. These results have implications for the function and constraining ability of the judicial hierarchy, and they provide new insight into how judging significantly differs by court level.

2. HIERARCHICAL INFLUENCE

2.1. Hierarchical Judicial Decision Making

There are many reasons to expect that lower-court judges, like federal trial court judges, will be constrained and influenced by the court(s) above them in the judicial hierarchy. While the presence of lifetime appointments resulting from external political selection may make lower-court judges imperfect agents under principal-agency theory (Kim 2011; Nash and Pardo 2013), many of the characteristics native to the theory, such as effective monitoring, tools of punishment, and incentivized agents, are present between the hierarchically situated federal courts (Singer, Segal, and Cameron 1994; Lindquist, Haire, and Songer 2007; Scott 2006). For district judges at the bottom of the federal judicial hierarchy, the considerations inherent in principal-agency theory are likely to be particularly relevant. “District judges are constrained: Unlike appellate court judges, whose opinions are subject only to discretionary (and occasional) review by the Supreme Court, district court decisions are subject to mandatory (and routine) review by circuit courts” (Choi, Gulati, and Posner 2012, p. 520). A primary way that district judges are controlled and sanctioned by circuit judges is through reversals, since such an outcome overturns
a district judge’s decision and, when accompanied by a remand, adds
additional work for the judge (Randazzo 2008; Baum 1997). Caminker
(1994) argues that lower-court judges want to avoid reversals because of
reputational costs that can extend to, for example, district judges’ likeli-
hood of advancement. Indeed, district court judges are often highly mo-
tivated to be elevated to the courts of appeals, something that is a very
real possibility given that there are “fewer than four district court judges
for every seat on the courts of appeals” (Hettinger, Lindquist, and Mar-
tinek 2006, p. 23). These constraints should help transform district court
judges into hierarchical agents of the courts of appeals (Haire, Lindquist,
and Songer 2003, p. 147).

Recent empirical work finds strong evidence to support the presence
of hierarchically constrained district judge decision making in different
contexts. For example, Randazzo (2008) finds that district court judges
anticipate the preferences of their court of appeals superiors in civil lib-
erties and economics cases. Perino (2006) reveals that district judges
moderate their behavior in securities fraud action cases in anticipation
of an ideologically dissimilar circuit court. Choi, Gulati, and Posner
(2012) find evidence of strategic publication rates among district judges
as those judges’ ideologies move further from those of their reviewing
circuit. Epstein, Landes, and Posner (2013) provide evidence that federal
district judges are less likely to sentence defendants below the sentenc-
ing guidelines range when they sit in a circuit dominated by Republican
judges. Schanzenbach and Tiller (2007) and Buchman (2007) also indi-
cate that trial court judges strategically use deferential standards of re-
view to protect their sentencing and evidentiary decisions from reversal.
Finally, Baum (1980, p. 223) finds that “courts of appeals exert real in-
fluence over the decisions” of their district court subordinates in patent
cases, a result that is not ideology dependent and that indicates a “degree
of hierarchical control in the judicial system.”

2.2. Remand Research Design

The goal in this study is to provide new empirical insight into the in-
fluence of a supervising circuit court on district judges’ decision making
through the presence of hierarchical interaction between district courts
and courts of appeals in individual cases. To do this, I focus on district
court cases that have been appealed (for the first time) to the circuit
courts, reversed, and remanded to the district level for reconsideration.
According to Spriggs (1996), which examines U.S. Supreme Court re-
mands to federal administrative agencies, a remand "creates sources of uncertainty" (p. 1128) for lower courts and implementing bodies while simultaneously providing them decision-making discretion. Pacelle and Baum (1992), who adopted a similar research design for examining Supreme Court remands to lower courts, argue that with remands, "the willingness of a lower court to change its ruling will reflect the extent of the Supreme Court's authority for it" (p. 173). Probably the most famous example of a remand to district courts is in Brown v. Board of Education of Topeka (Brown II). There the Supreme Court provided a list of school conditions that lower courts could consider and then noted, "[T]he cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases" (349 U.S. 294, 301 [1955]).

While appealed and remanded cases by no means represent a random and unbiased set of all federal disputes or even district court cases, my research design focuses on this special class of cases and provides a number of benefits. Most predominant, remands from the federal courts of appeals to district courts occur frequently and typify the observable hierarchical interaction that takes place between these courts. According to Kuersten and Haire (2011) and their sample of court of appeals cases from 1997 to 2002, over 74 percent of circuit court cases reversing and/or vacating district court judges’ decisions (in whole or in part) contain a remand.

This close examination of oft-occurring remands permits the evaluation of district court case outcomes before and after circuit court intervention. Prior to that intervention, district judges, fearing reversal on appeal, may well attempt to anticipate circuit court preferences and alter their behavior accordingly. While they will often be successful in this strategy, this process can also be hindered at times by limited information and a large amount of uncertainty, not the least of which involves the composition of the prospective three-judge circuit panel. When a circuit court rules on appeal, reverses the lower court's judgment, and remands

1. Despite the numerous benefits of focusing exclusively on remanded cases in the federal judicial hierarchy, because of selection effects and the well-known limitations that they pose (see, for example, Priest and Klein 1984; Belchuk 1984), caution is urged when extending the conclusions from this article to other hierarchical considerations and encounters between district courts and courts of appeals. Some of these potential areas of extension are further explored in Section 6.
the case to the district court for additional proceedings, the initial district court outcome (in whole or in part) has been declared a "mistake," and much of the preexisting uncertainty about circuit court panel composition and preferences is removed. My examination of district courts’ behavior after circuit court intervention thus captures an important aspect of the effectiveness of the federal judicial hierarchy that is difficult to observe in other settings. The vertical research design also holds constant many case, institutional, political, and actor characteristics.

2.3. Hierarchical Signals

When remanding a case to the district court, panelists on the court of appeals can signal their preferences about the process and outcome that should follow. They can also indicate the level of importance that the case holds for them and the degree to which they were unified in reversing the district court’s outcome. The most explicit means of communication from circuit judges to district judges on remand is through written opinions. Using these opinions, appellate judges can denounce lower-court behavior and legal interpretation, signal changing or opaque preferences, develop legal parameters, and provide instructions for future decision making. Direct signals like these can be invaluable to a district judge on remand, particularly if he is motivated primarily to follow his hierarchical superiors.

Three key features of remand opinions from courts of appeals can serve these signaling purposes: the specificity of the directions given to district judges, the publication status of the opinion, and the presence or lack of a dissenting opinion. The first of these has to do with the content of the court of appeals opinion, which can vary greatly. Using circuit opinions as guidance after remand, district judges have varying amounts of discretion in how they carry out the circuit courts’ mandates. As a number of scholars have argued, as judicial opinions become more specified in nature, implementation of higher-court goals and policies becomes more likely (Spriggs 1996; Baum 1980; Wasby 1970; Canon and Johnson 1999). When courts of appeals write opinions with very specific directions as to, for example, the procedures, development, or outcome that should take place in the trial court, their preferences become very clear, and lower courts have limited to no discretion in the actions that they can take while retaining the favor of their supervising court. As the specificity of directions in opinions decreases, the amount of discretion that district courts can exercise on remand increases. When an appellate court opin-
ion exhibits less specificity, it "means . . . what the district judge says it means" (Peltason 1961, p. 21).²

Hypothesis 1. District judges will be more likely to be responsive to a supervising circuit court when the remanding opinion provides specific directions.

In addition to the language utilized in its decisions, an appellate court can signal the strength of its opinions to lower courts in another way. Notably, a circuit court of appeals can mandate whether its opinions should be published. Circuit rules generally allow the circuit panel to designate a decision as not for publication when it is determined to not have precedential value.³ Unpublished opinions are often "shorter and less developed than published opinions" (Wasby 2004, p. 81) and tend to appear much less often in appellate court dispositions reversing the lower court's decision than in those affirming them (Wasby 2005). In the context of remanded circuit court cases, unpublished opinions may signal to the district judge that the circuit panel is less concerned about the district judge's decision making on remand than if the opinion had been published.

Hypothesis 2. District judges will be more likely to be responsive to a supervising circuit court when the remanding opinion is published.

Circuit court oversight is more likely to be viewed as credible and constraining when the panel speaks in one voice about the law and necessary directions on remand (Spriggs 1996; Baum 1980). Conversely, the presence of dissenting opinions signals that there was discord among these appellate judges in resolving the case (Wahlbeck, Spriggs, and Maltzman 1999).⁴ By stating in writing his reasons for disagreement with the majority, the dissenter provides a district court judge, perhaps already unhappy

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² Section 5 explores the implications of circuit courts that, in remanding a case, anticipate a district judge's reaction and, when concerned with compliance, issue decisions allowing for lower levels of discretion in response.

³ Until 2007, each circuit set its own rules for if and when unpublished opinions could be cited. Federal Rule of Appellate Procedure 32.1 now mandates that unpublished circuit decisions can be cited by parties. This rule change may dampen the signal sent by the publication of opinions, but my data extend only through 2004.

⁴ Disagreement among circuit panelists may, alternatively, be signaled through the uniformity (or lack thereof) of partisanship on the three-judge panel. This may be particularly true given that the act of dissenting in the circuit courts remains rare (Hettinger, Lindquist, and Martinek 2004). Section 5 and the Appendix examine this alternative specification of a discord signal coming from the supervising circuit court. I am grateful to an anonymous reviewer for this suggestion.
with the stigma of reversal, hope that his case management and outcome preferences need not defer (entirely) to the directions and preferences of the appellate panel’s majority.5

Hypothesis 3. District judges will be more likely to be responsive to a supervising circuit court when no panel judges dissent from the remanding opinion.

While federal appellate judges face few hierarchical constraints on their judging, which means that more room exists for personal preferences to dominate their decision-making behavior, this is less true for highly constrained district judges. The mixed findings of ideological decision making in theoretical and empirical studies of district courts are telling. Rowland and Carp (1996), Schanzenbach and Tiller (2007), and Epstein and Rowland (1991) provide empirical support for preference-based decision making among district judges across areas such as criminal sentencing and procedural gatekeeping. These findings stand in sharp contrast to work by others indicating that ideology is generally not a strong predictor of district judges’ decision making (for example, Zorn and Bowie 2010; Keele et al. 2009; Ashenfelter, Eisenberg, and Schwab 1995). If ideology does affect some or all of district judges’ decisions, it will likely impact the likelihood of hierarchical responsiveness as well, including the willingness of these judges to follow the directions of their supervising circuit courts in remanded cases.

Hypothesis 4. District judges will be more likely to be responsive to a supervising circuit court’s decision when they are ideologically similar to the reviewing circuit panel.

3. DATA AND VARIABLES

This study turns to a newly collected data set of cases reversed and remanded to 29 federal district courts from the U.S. courts of appeals to test for the responsiveness of federal district court judges to their supervising courts of appeals. Using the Federal Judicial Center’s (FJC’s) civil terminations Integrated Data Bases for 2000–2004 (Federal Judicial Center 2000–2004) and the corresponding data from the FJC’s appellate terminations and pending databases to identify the population of cases that

5. Courts of appeals judges can dissent from an unpublished decision, although they do so relatively rarely (Wasby 2004). In my data, 25 percent of the dissenting opinions occurred in cases without a published opinion.
were appealed from the district courts to the courts of appeals, I then collected the circuit court dispositions to find all appeals that were eventually remanded to the district court after an appellate reversal and/or vacation. After I identified a case as having a remand, I collected the dispositions of the case in the district court before and after the appeal. To simplify the research design, I coded the preappeal, appeal, and postremand dispositions at the case level (that is, treating each case as a single unit and coding for overall winner) rather than at the issue level. In addition, for purposes of design simplification, I excluded any successive appeals of district court rulings after a remand (and with them, the potential for successive remands). I used docket sheets, opinions, orders, and memoranda to code the cases.

6. All cases in the Federal Judicial Center's appellate terminations data with appellate outcomes of reversal or vacation, in whole or in part, were examined and recoded for the presence of a substantive remand. Dispositions without a substantive remand are not included in my data. Also excluded are interlocutory appeals, cases with sealed case documents necessary to the project's coding, appeals and remands dealing solely with attorney sanctions, and remanded cases in which a circuit court sat en banc. The small number of cases in which the initial district court termination resulted from a jury verdict are not included, since district judges' outcome-related decision making is less clear in these cases. Finally, cases in which the circuit court partially affirmed the original district court's decision and provided highly specific remanding instructions for the portion of the case that was reversed or vacated are excluded. The inclusion of these cases in my data set does not alter the signs or significance on the regression results below, but it does increase the percentage of opinions with highly specific directions that are present where there is ultimately no change in the district court case winner postremand, which thereby slightly deflates the magnitude of the effect of the variable Highly Specific Directions. I am grateful to two anonymous reviewers for advice on this point.

7. An alternative research design would be to track individual issues in a case, beginning from a case's original complaint, to their ultimate conclusion. This approach was adopted by Boyd and Hoffman (2010) for a small set of cases involving federal veil-piercing claims. While this design would undoubtedly be informative here, it would be costly to employ and, because not all complaints from the early 2000s are available, would likely lead to a number of dropped observations. By focusing on the case level rather than the issue level, my research design provides a simpler and more cohesive picture of the litigation and hierarchical relationship examined here.

8. For example, Krimstock v. Kelly (1:99-cv-12041), a Southern District of New York civil forfeiture case filed in 1999, had three appeals and remands (2000, 2003, and 2005) before ultimately terminating in 2007. Some circuit courts have created local rules to specify panel assignment for these types of “comeback” cases (1st, 3rd, 4th, 6th, 7th, and 9th Circuits), all of which indicate some level of deference of assignment to the case's original appeal panelists while recognizing that factors such as efficiency or the emergence of wholly new issues may result in the successive appeal being randomly assigned. District judges and litigants who, on remand, are able to anticipate that their case is likely to lead to a second appeal and will be randomly assigned a new appellate panel during successive appeal(s) may be less constrained by the original appellate panel's decision. The variable Circuit Size helps to account for some of this uncertainty in the modeling.
My data set focuses on cases in three large issue areas, identified on the basis of their nature of suit (NOS) code: civil rights cases, personal injury tort disputes, and a variety of complex business-related cases, including general contracts, copyrights, patents, and trademarks. The 29 districts in the data set represent a diverse group of trial courts and, overall, represent the 94 district courts well. These 29 districts provide representation for 11 of the 12 circuit courts (excluding only the D.C. Circuit); range in size from very small (two active judges), to medium (seven active judges), to very large (28 active judges); are diverse in terms of the partisanship of their sitting, active judges (as measured by the party of their appointing president); and vary in the number of criminal and civil filings per judge (from a low of 301 per judge in the Northern District of Oklahoma to a high of 724 per judge in the Eastern District of Louisiana).

3.1. Dependent Variable

The dependent variable in this study is Change in Winner, which indicates whether there is a change in winner in federal district court cases from the first, preappeal outcome to the second, postappeal, postremand outcome. The variable is coded as one when the district court case has a different winning party prior to appeal than it does after remand and zero otherwise. In most instances, defining the winning party is easy. For district cases prior to appeal, usually only one party appeals the case outcome, so that party is defined as the loser. If more than one party appeals, the appellant whose appeal is reversed and remanded is treated as the original trial court loser. For cases ending in mixed relief postremand, the plaintiff is generally defined as the winner. However, if the postremand outcome is a settlement, the dependent variable is coded as creating a change in a case’s outcome and winner. As an example, if the plaintiff wins a bench verdict preappeal and loses on appeal and then the case settles on remand, it is very possible that the plaintiff’s settlement recovery postremand is less than his bench verdict preappeal, and, as such, this coding acknowledges that the appeal and remand helped

9. The nature of suit (NOS) codes and subjects are civil rights cases (NOS codes 440, 442, 443, and 444), which include a variety of employment discrimination claims and civil rights claims dealing with constitutional torts or housing discrimination; personal injury claims related to airplanes, marine-related vehicles, and motor vehicles and broader tort claims related to assault, libel, and/or slander (NOS codes 310, 320, 340, 350, and 360); and complex business-related cases (NOS codes 190, 820, 830, and 840), which include property rights related to copyrights, patents, and trademarks and a broad business-catchall category, "other contracts."

10. These 29 districts were selected for inclusion in this data set because they agreed to provide a PACER fee exemption for the data collection.
change the case’s outcome. Because some readers may be concerned that
this settlement-coding decision drives the regression results, model (1c) in
the Appendix recodes Change in Winner to treat postremand settlements
as always being a plaintiff victory. Following the above example, this
recoding reflects that in both instances, preappeal and postremand, the
plaintiff has a nonnegative outcome and recovered something. Overall,
as the summary statistics and expected effects reported in Table 1 reveal,
approximately 65 percent of the cases in the data set have a change in the
case’s winner from preappeal to postremand.

3.2. Independent Variables and Expectations

To account for instances in which the supervising circuit court uses its
opinion to attempt to strip the district court of some or all discretion in
managing the case on remand, I code the dichotomous variable Highly
Specific Directions. To code this variable, I examined circuit panels’ opin-
ions remanding a case to the district court for the presence or lack of
explicit, discretion-removing directions on what outcome, in whole or
in part, the district court should reach on remand. Highly specific di-
rections include clear, unambiguous language indicating that a specific
claim or the entire case, following the appeal, should be resolved in a
particular way. In an example of a case coded as having highly specific
directions on remand, in Osediacz v. City of Cranston, 414 F.3d 136
(1st Cir. 2005), Judge Bruce Sylva’s remanding opinion for the panel in-
cluded the following concluding directions to the district court, ending
with explicit language regarding the outcome of the case on its return
to the district court: “We recognize . . . that the Policy is constitutionally
suspect and we encourage the City to abandon it (or, at least, to modify
it substantially). Absent a plaintiff with a cognizable interest in the out-
come, however, this is not an appropriate proceeding in which to adjud-
cicate the Policy’s merits. . . . [W]e remand the case to the district court
with instructions to dismiss that claim and the due process claim with-
out prejudice for want of standing.” In yet another example, Houghton
v. Reinertson, 382 F.3d 1162 (10th Cir. 2004), the plaintiffs challenged
Colorado’s inclusion of self-funded retirement accounts in determining
Medicaid eligibility. Preappeal, the district court granted summary judg-
ment in favor of Colorado (Reinertson) and denied the plaintiffs’ cross
motion for summary judgment. In her unanimous opinion for the panel
reversing and remanding to the district court, Judge Mary Beck Briscoe
provided the following instructions to the lower court, once again ending
with highly specific language regarding the postremand case’s outcome:
Table 1. Summary Expectations and Statistics for Key Variables

<table>
<thead>
<tr>
<th>Variable</th>
<th>Expected Effect on Dependent Variable</th>
<th>Mean</th>
<th>SD</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in Winner</td>
<td>N.A.</td>
<td>.654</td>
<td>.476</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Highly Specific Directions</td>
<td>+</td>
<td>.082</td>
<td>.275</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Published Opinion</td>
<td>+</td>
<td>.556</td>
<td>.497</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>No Dissenting Opinion</td>
<td>+</td>
<td>.922</td>
<td>.269</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Difference in Ideology</td>
<td>–</td>
<td>.343</td>
<td>.225</td>
<td>0</td>
<td>1,064</td>
</tr>
<tr>
<td>Outlier Circuit</td>
<td>–</td>
<td>.260</td>
<td>.096</td>
<td>.018</td>
<td>.484</td>
</tr>
<tr>
<td>Outlier Panel</td>
<td>–</td>
<td>.197</td>
<td>.148</td>
<td>.0004</td>
<td>.793</td>
</tr>
<tr>
<td>Circuit Size</td>
<td>–</td>
<td>15.11</td>
<td>5.715</td>
<td>5</td>
<td>27</td>
</tr>
<tr>
<td>Pro Se (Loser Below)</td>
<td>–</td>
<td>.211</td>
<td>.408</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>High Status (Winner Below)</td>
<td>–</td>
<td>.298</td>
<td>.457</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Plaintiff Appellant</td>
<td>–</td>
<td>.882</td>
<td>.323</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Early Initial Termination</td>
<td>–</td>
<td>.348</td>
<td>.477</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>New District Judge</td>
<td>+</td>
<td>.122</td>
<td>.328</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Civil Rights Case</td>
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<td>.484</td>
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<td>1</td>
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<tr>
<td>Business Case</td>
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<td>.442</td>
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<td>1</td>
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<tr>
<td>Tort Case</td>
<td>N.A.</td>
<td>.108</td>
<td>.311</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

Note. Statistics reported are for the full data set. N.A. = not applicable.

“Although we agree with the district court that the MCCA permits Colorado to classify self-funded retirement accounts . . . we disagree with the court’s conclusion regarding Colorado’s reclassification of [the plaintiff’s] IRA account. We REVERSE and REMAND to the district court for entry of summary judgment in favor of [the plaintiffs].”

Where specific directions regarding the case’s outcome, in whole or in part, like these are present, Highly Specific Directions is coded as one.\textsuperscript{11} For any other directions, or lack thereof, such as “remand for further discovery,” “remand for a new trial” on one or more claims, or the very common “remand for further proceedings consistent with this opinion” Highly Specific Directions is coded as zero.\textsuperscript{12} Just over 8 percent of

\textsuperscript{11} While highly specific directions are designed to remove discretion from district judges on remand, they do not always lead to a change in the case’s outcome after the appeal (although they often do), since district judges can still shirk. This is explored in more detail in Section 5. The correlation between Highly Specific Directions and Change in Winner is .1034.

\textsuperscript{12} Opinions with directions that are not highly specific can be classified into lower categories of specificity and discretion grants (for example, low specificity, medium specificity, and so forth). However, further analysis reveals that each of these specificity variables is significantly different from Highly Specific Directions but not from each other. As such, their inclusion in the modeling provides no additional statistical leverage. Modeling that includes these additional specificity variables is available from the author on request.
the cases in the data have remanding directions that can be classified as highly specific.13

Opinion publication status is coded dichotomously, with Published Opinions coded as one and unpublished opinions coded as zero. Published opinions are present in 56 percent of the cases in my data. The variable No Dissenting Opinion is also coded dichotomously.14 In the data set, 92 percent of the cases have no recorded dissenting circuit court opinion.

Difference in Ideology operationalizes the ideology-related hypothesis 4. This variable represents the absolute difference in the ideologies of the district court judge and the circuit panel’s majority. To measure this difference, I collect the Judicial Common Space (JCS) scores for these actors, a variable coded using the methodology described in Giles, Hettinger, and Peppers (2001) and Epstein et al. (2007).15 The resulting computed ideology scores range from −1 (the most liberal) to 1 (the most conservative). For the district court judges in my data set, I use the JCS score of the judge presiding over the case at its termination after remand.16 For magistrate judges serving as assigned district judges by the consent of the parties, I follow Boyd and Sievert (2013) and take the median district judges’ JCS score for the year of their appointment.17 For the courts of appeals score, I utilize the individual JCS score data available from Epstein et al. (2007) for the judges in the majority and then compute the mean for each majority panel. Difference in Ideology values range from 0 to 1.064, with a mean ideological difference of .343.

13. The coding of Highly Specific Directions, while straightforward in nearly all cases, was assessed for intercoder reliability. The results indicate that the coding is objective and stable, with the observed agreement across coders well above that which would be observed by chance. The expected agreement (by chance) among coders would be 77 percent, while the observed agreement is 97.6 percent. The kappa statistic, which ranges from 0 to 1 (with 1 being a perfect value), is .89.

14. As detailed in note 4, an alternative specification of intrapanel disagreement is whether the panelists have uniform or mixed partisanship. Included in model (1e) in the Appendix, Mixed Panel equals one if the panelists include a mix of Democrat- and Republican-appointed judges and zero if the panelists were all appointed by presidents of the same political party; 71 percent of the circuit panels in the data have mixed partisanship.

15. Importantly, this variable measures ideology and ideological differences on the basis of the involved judges’ (static) measured preferences and not of their specific voting behavior in the cases before them in the data set.

16. For these district judge Judicial Common Space scores, see Christina L. Boyd, Federal District Court Judge Ideology Data (http://cloyd.net/ideology.html).

17. To ensure that the inclusion of magistrate judges or the coding of their ideologies through district court proxies does not bias the results, regression model (1b) excludes these judges’ cases from the estimation.
While the opinions of appellate courts and ideological differences may be a strong impetus of decision making and case management alteration among district judges on remand, other legal and institutional factors and actors’ characteristics may also influence changes in outcomes and procedures in federal district courts following a remand. By controlling for these, I can better isolate any effect that may be present in the hierarchical relationship of interest. First, to account for other potential political and hierarchical signals for district judges presiding over cases on remand, I control for whether the circuit court is an ideological outlier (Outlier Circuit) of the Supreme Court and whether the three-judge panel hearing the case is an ideological outlier in its circuit (Outlier Panel). The former is motivated by the increased probability of Supreme Court review the more distant a circuit court is from the high court (Haire, Lindquist, and Songer 2003; Scott 2006), something that may factor into a district judge’s mind on remand. The latter, Outlier Panel, reflects a potentially similar dampening effect on the dependent variable, albeit this time by district judges recognizing that their reviewing panel may not reflect the preferences of the larger supervising circuit (Kastellec 2011; Giles, Walker, and Zorn 2006). Each of these variables is measured as the absolute difference in JCS scores between the two bodies of interest (Supreme Court and circuit or circuit and circuit panel; mean of the majority judges only). Relatedly, Circuit Size, which measures the number of active circuit judges in a circuit each year, helps capture the possibility that an appeal’s original circuit panelists will be reassigned to a case if, as further detailed in note 8, the remanded district case returns to the circuit court for a successive appeal and the original panel has not explicitly retained the case.

Second, I control for litigants’ experience, status, and identity. The term Pro Se (Loser Below) indicates the presence of a pro se litigant who was the loser in the district court prior to appeal. Pro se litigants tend to be weaker than represented parties and more likely to file frivolous lawsuits (Smith 1999). Here their disputes may not be wholly frivolous (the circuit courts reverse the trial courts’ decisions to dismiss), but it is likely that the cases are being remanded largely to provide a few additional constitutional protections. Therefore, the presence of these weaker parties in a case should make change less likely. On the other hand, the variable High Status (Winner Below), which indicates a high-status litigant who won in the initial district court proceeding but lost on appeal, should decrease the likelihood of change in district court outcome from pre-remand to post-remand. For these parties, considered here to be businesses, governments, and interest groups, their position in litigation is likely to be
strengthened compared with that of individuals because of their frequent repeat-player status and more plentiful resources (Galanter 1974). Even if their initial district court victory is overturned on appeal, highly resourced parties should be comparatively well positioned to achieve another district court victory on remand. The variable Plaintiff Appellant controls for whether the appealing party (who, in the case of cross appeals, has his trial court outcome reversed and remanded) is the case’s original plaintiff. Previous work (for example, Eisenberg and Farber 2013; Clermont and Eisenberg 2001) indicates that plaintiffs who lose at trial in federal district courts and then appeal are less successful on appeal than are defendants. Controlling for this identity here accounts for the potential that this differentiation in success rates may also extend to a broader set of cases on remand.

Third, I account for the amount of progress that has taken place in a case prior to appeal. In cases where there has been little development, it is difficult for the appellate court to directly influence the district court winner on remand. Instead, it is more likely that the court of appeals’ reversal and remand is influencing the amount of process and case development via discovery, pretrial preparation, and/or trial that is required prior to termination. To capture these early terminating cases, I recode the Administrative Office’s (AO’s) procedural progress variable, Early Initial Termination, as one if, as reflected in the AO’s coding, the defendant has not yet answered the complaint or filed a motion to dismiss prior to the initial, preappeal termination in the district court case (Administrative Office of the United States Courts 1999, 3:17).18

Fourth, I use the variable New District Judge to control for the times when the identity of the district judge presiding over the case changes from preappeal to postremand. The new district judge will not be nearly as tied to the original district judge’s decision making in the case, and a change in outcome on remand is more likely. Finally, because this study incorporates three broad issue areas—civil rights, business, and torts—controlling for them ensures that any results are not driven by qualities that might be unique to one area. A summary of the expectations and descriptive statistics for these variables are provided in Table 1.

18. To further explore the effect of these cases on the data and whether their presence materially biases the results, model (1d) in Table A1 estimates the regression after excluding early terminating cases. As those results indicate, this exclusion does not materially alter the findings reported here.
4. MODELING AND RESULTS

I turn now to the estimation of whether a supervising circuit court influences a district court to change a case’s winner after a reversal and remand. To do this, Table 2 reports the results of an estimated logistic regression. This model includes all judges and cases in the data. To ensure robustness, five additional models (all logistic regressions) are reported in Table A1. Model (1a) excludes cases in which the assigned district judge changes after remand (that is, where New District Judge equals one). Model (1b) excludes, as referenced in note 17, cases in which the case’s assigned district judge preappeal or postremand is a non–Article III magistrate judge. Model (1c) recodes the dependent variable for cases with a plaintiff winner preappeal and a settlement postremand. Model (1d) excludes cases experiencing an early initial termination, as described above. Finally, model (1e) substitutes the variable Mixed Panel for No Dissenting Opinion (see note 4). The results from the models are nearly identical. Therefore, for ease of discussion, I focus in this section on the logistic regression results in Table 2, which include all cases and judges in the data.

As Table 2 indicates, a number of key variables have a statistically significant effect on Change in Winner. With regard to the four hypotheses, the table provides initial statistical support for two of them—hypothesis 1 (highly specific directions in the circuit court’s remanding opinion) and hypothesis 2 (a published remanding opinion). To tease out the substantive effects related to the result for highly specific directions, Table 2 also provides the marginal effects and their confidence intervals. The marginal effect of Highly Specific Directions on the dependent variable is nearly .16 compared with a remanding opinion lacking that level of specificity.

With regard to hypothesis 2, a published circuit court opinion should signal the presence of more circuit court concern about a case and its ultimate resolution on remand and, as such, should create an opportunity for a positive effect on the dependent variable. The variable Published Opinion in model (1), which is positive and statistically significant, provides support for this expectation. The substantive effect of Published Opinion is also meaningful: the marginal effect of a published opinion versus an unpublished opinion nears .12. Because the signal sent on remand by a published opinion is more subtle than that sent by explicit, highly specific directions for the case’s outcome, the magnitude of Published Opinion on creating a change in a district case’s winner from appeal to postremand is all the more notable.

19. Estimating a linear probability model for this analysis results in virtually identical statistical and substantive results.
Table 2. Effects on Change in a Case’s Winner from Preappeal to Postremand: Logistic Regression Results

<table>
<thead>
<tr>
<th></th>
<th>Coefficient</th>
<th>Marginal Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highly Specific Directions</td>
<td>.822*</td>
<td>.158</td>
</tr>
<tr>
<td>(,30)</td>
<td>(.06, .25)</td>
<td></td>
</tr>
<tr>
<td>Published Opinion</td>
<td>.530*</td>
<td>.118</td>
</tr>
<tr>
<td>(.16)</td>
<td>(.05, .19)</td>
<td></td>
</tr>
<tr>
<td>No Dissenting Opinion</td>
<td>.302</td>
<td>.069</td>
</tr>
<tr>
<td>(.27)</td>
<td>[-.06, .20]</td>
<td></td>
</tr>
<tr>
<td>Difference in Ideology</td>
<td>-.415</td>
<td>-.092</td>
</tr>
<tr>
<td>(.31)</td>
<td>[-.23, .04]</td>
<td></td>
</tr>
<tr>
<td>Outlier Circuit</td>
<td>.321</td>
<td>.071</td>
</tr>
<tr>
<td>(.79)</td>
<td>[-.27, .41]</td>
<td></td>
</tr>
<tr>
<td>Outlier Panel</td>
<td>.399</td>
<td>.088</td>
</tr>
<tr>
<td>(.47)</td>
<td>[-.12, .29]</td>
<td></td>
</tr>
<tr>
<td>Circuit Size</td>
<td>.019</td>
<td>.004</td>
</tr>
<tr>
<td>(.01)</td>
<td>[-.00, .01]</td>
<td></td>
</tr>
<tr>
<td>Pro Se (Loser Below)</td>
<td>-.605*</td>
<td>-.140</td>
</tr>
<tr>
<td>(.20)</td>
<td>[-.24, -.05]</td>
<td></td>
</tr>
<tr>
<td>High Status (Winner Below)</td>
<td>.192</td>
<td>.042</td>
</tr>
<tr>
<td>(.23)</td>
<td>[-.05, .14]</td>
<td></td>
</tr>
<tr>
<td>Plaintiff Appellant</td>
<td>-.166</td>
<td>-.036</td>
</tr>
<tr>
<td>(.29)</td>
<td>[-.16, .09]</td>
<td></td>
</tr>
<tr>
<td>Early Initial Termination</td>
<td>-.435*</td>
<td>-.098</td>
</tr>
<tr>
<td>(.15)</td>
<td>[-.17, -.03]</td>
<td></td>
</tr>
<tr>
<td>New District Judge</td>
<td>.244</td>
<td>.052</td>
</tr>
<tr>
<td>(.23)</td>
<td>[-.04, .14]</td>
<td></td>
</tr>
<tr>
<td>Civil Rights Case</td>
<td>-.146</td>
<td>-.032</td>
</tr>
<tr>
<td>(.27)</td>
<td>[-.15, .08]</td>
<td></td>
</tr>
<tr>
<td>Business Case</td>
<td>.361</td>
<td>.077</td>
</tr>
<tr>
<td>(.30)</td>
<td>[-.04, .20]</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>.085</td>
<td></td>
</tr>
<tr>
<td>(.37)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note. Robust standard errors clustered on a case’s assigned district judge are in parentheses. The 95 percent confidence intervals around computed marginal effects are in brackets. The baseline issue is tort cases. N = 934.

*p ≤ .05; two-tailed test.

Perhaps most impressive in these substantive results is the result when I compare the effect of an unpublished circuit court decision that lacks highly specific remand instructions with a remanded case with a court of appeals opinion that is both published and highly specific in its directions to the district court. The difference between these two very distinct remanding opinions amounts to a .26 difference in the probability of a district court altering the case’s outcome after a remand.
While the results regarding hypotheses 1 and 2 are strong, Table 2 provides no statistical support for hypothesis 3 or 4. The variable No Dissenting Opinion (hypothesis 3) is positively signed, as expected, but it does not reach statistical significance. Similarly, Mixed Panel, the alternative specification measuring mixed partisanship on a panel (model [1e] in Table A1), fails to reach statistically significant levels. With regard to hypothesis 4, while the coefficient for Difference in Ideology is negative, it does not reach statistical significance.20

Most of the control variables do not reach statistically significant levels. However, Pro Se (Loser Below) performs as expected. The presence of a pro se litigant who loses in the district court and wins on appeal has a negative effect on the likelihood of there being a change in winner on remand. In other words, compared with other victorious appealing litigants, on remand a pro se litigant is less likely to win the second time in the trial court. This result provides further evidence that pro se litigants really are at a disadvantage in litigation. In addition, the presence of an early initial termination has a negative effect on the likelihood of a change in winner on remand. This may be due to the underlying weakness of cases that are subject to early termination in district courts prior to appeal. While the appellate court may mandate additional procedural or legal development of a case on remand, an early dismissal prior to appeal may signal case-quality problems that will continue to plague a case as that further development takes place. As model (1d) in Table A1 reveals, the exclusion of these cases from the modeling does not change my main results.

5. FURTHER EXAMINATION OF OPINION SPECIFICITY AND PUBLICATION

These statistical results provide strong evidence to support hypotheses 1 and 2, which indicate that cases with circuit courts remanding opinions that are published and contain very specific directions for the post-appeal outcome are most likely to exhibit a change in winner on return to the trial court. The strength of these variables presents the opportunity for additional analysis, including examination of whether their effect on Change in Winner is conditioned by the ideological distance between the

20. As an additional robustness check of this ideological hypothesis, I also estimated model (1) after interacting issue area with Difference in Ideology. The results of this additional estimation (available on request) conform with those reported in Table 2: that is, they indicate no statistically or substantively significant ideological distance effect across the issue areas in the data.
circuit panel majority and the district judge and whether their presence on remand is strategically contemplated by the remanding circuit panel.

With regard to ideological distance, one might expect that the likelihood of a district judge following the circuit court’s remanding signals of highly specific directions and published opinions may be conditional on that judge’s preferences and how they vary from those of the case’s supervising circuit court panel. To provide insight into this, I reestimate the logistic regression reported in Table 2 but include two additional interaction variables: Highly Specific Directions × Difference in Ideology and Published Opinion × Difference in Ideology. The results indicate that while all cases with highly specific directions and published opinions have a relatively high likelihood of experiencing change in winner on remand, and while this likelihood declines modestly as ideological distance grows, this difference is generally not statistically significant at the .05 level.

While this analysis does confirm some sizable differences among opinion types (for example, with highly specific, published opinions having a .88 probability of change in winner and unpublished opinions that do not contain highly specific directions having only a .55 probability of the same), these differences do not seem to be conditioned by ideological distance.

In my second supplemental analysis of highly specific directions and published opinions, I return to the U.S. court of appeals panel and how it crafts its remanding decisions. Scholars have argued that the crafting of appellate court opinions and the directives written therein varies greatly

21. Note that this differs from hypothesis 4, which tests, unconditionally, whether a difference in ideology affects the dependent variable.

22. For remanding opinions that are published and contain highly specific directions, the probability of a change in winner drops from .88 to .76 as ideological difference moves from its minimum to its maximum values. This difference grows ever so slightly to .13 when examining published opinions without highly specific directions across the range of values. In each case, the confidence intervals are too large for the effect to be statistically significant. The full results of this supplemental analysis are available on request.

23. This analysis necessitates two notes of caution. First, no matter the strength of the signal about the case’s outcome on remand coming from the circuit court, variables such as Pro Se (Loser Below) and Early Initial Termination will always weaken the underlying pool of cases and prevent some from experiencing a change in outcome after appeal. This, rather than just noncompliance, helps explain why, even when ideological distance is minimized, remands containing highly specific directions still fail to result in a change in winner about 10 percent of the time. Second, when focusing on cases with highly specific directions or published opinions, I find that the number of observations in the data is limited: there are fewer than 80 cases with highly specific directions and fewer than 150 cases with published opinions. When spread across the range of values for ideological distance, this small set of cases is inevitably restricted in its explanatory power.
according to the predicted response from the inferior court. For example, Jacobi and Tiller (2007) and Cross, Jacobi, and Tiller (2012) find that the degree of discretion granted to lower courts in appellate court opinions depends on the policy alignment between the two bodies, with variation in preferences leading to increasingly inflexible opinions. According to these insights, circuit judges may anticipate the behavior of district judges on remand and, when fearful of noncompliance from ideologically distant district judges, adjust their opinions to restrict discretion (using highly specific directions). At the same time, these remanding appellate judges may strategically use the publication or, in this case, nonpublication of opinions to mask this practice and/or avoid creating bad law that may hamper their own decision making in the future.

To examine this, I construct a four-category dependent variable that combines each of the two types of specificity and publication: unpublished opinions without highly specific directions, unpublished opinions with highly specific directions, published opinions without highly specific directions, and published opinions with highly specific directions. Then, using multinomial logistic regression, I model the effect of difference in ideology between the district judge and the circuit panel majority on the presence of each of these categories of opinions. The results, presented in Table 3, indicate that compared with each of the three other types of opinions, as difference in ideology increases, circuit panels are significantly more likely to issue unpublished opinions with highly specific directions.24 While remanding opinions that are unpublished but contain highly specific directions are comparatively rare (less than 10 percent overall), their incidence increases by 333 percent when ideological distance moves from its minimum to its maximum value. This finding thus presents at least preliminary empirical support for the assertion that circuit court judges remanding to an ideological opponent on the district courts are more likely to use the tools at their disposal—their opinions’ specificity and publication status—to greatly reduce discretion while simultaneously avoiding the creation of inflexible precedent than when remanding to an ideological ally. It also likely provides insight into the above (lack of) results for the examination of whether the effect of opinion specificity and publication on the dependent variable is conditioned by ideological distance. In other words, the initial evidence seems to sup-

24. The issuance of the other three categories of remanding opinions—unpublished opinions without highly specific directions, published opinions without highly specific directions, and published opinions with highly specific directions—is not affected by difference in ideology.
Table 3. Effect of Difference in Ideology on the Remanding Opinion’s Publication Status and Specificity: Multinomial Logistic Regression Results

<table>
<thead>
<tr>
<th>Difference in Ideology</th>
<th>Unpublished, Specific versus Unpublished, Nonspecific</th>
<th>Unpublished, Specific versus Published, Nonspecific</th>
<th>Unpublished, Specific versus Published, Specific</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1.37* (.85)</td>
<td>1.38* (.85)</td>
<td>2.39* (1.14)</td>
</tr>
<tr>
<td>Constant</td>
<td>-2.92* (1.38)</td>
<td>-3.85* (1.31)</td>
<td>-4.48* (1.82)</td>
</tr>
</tbody>
</table>

Note. Robust standard errors clustered on a case’s assigned district judge are in parentheses. Control variables are included in all categories and mirror those in model (1) with the exception of No Dissenting Opinion, which can be populated simultaneously or even alter the dependent variable here. Results for other category comparisons, for which Difference in Ideology does not reach statistically significant levels, are omitted. N = 934.

* p ≤ .10; two-tailed test.
* * p ≤ .05; two-tailed test.

port a story more about strategic remanding by circuit judges than one involving postremand behavior modification by district judges.

6. DISCUSSION

The decision-making task of federal district judges is unquestionably complex. These judges, like their colleagues serving on the appellate courts, are political appointees serving with life tenure, which means that they may well be motivated by ideological considerations. However, they are also tasked with presiding over cases while serving at the bottom of the judicial hierarchy, an institutional design that regularly provides district judges opportunities to interact with their appellate colleagues. By placing a priority on the “interdependent nature of judges’ decision making” (Hettinger, Lindquist, and Martinek 2006, p. 123), my novel data and hierarchical research design allow me to examine when and why district judges are more likely to follow the example of their immediate superiors on the federal courts of appeals by changing their decision making and case management after reversal by a circuit court panel.

In what is likely not a surprise to many, the results of this study confirm that district judges often make changes to their assigned cases after an appeal, reversal, and remand. One of the important insights of this article is that courts of appeals judges’ hierarchical influence on district judges in remanded cases is not unconditional. Rather, the ability of these
intermediate appellate court judges’ to constrain trial judges’ behavior depends largely on their use of the tools at their disposal—such as the directions that they provide district judges on remand and whether they choose to publish a remanding opinion. When utilized, these appellate tools can increase district judges’ responsiveness on remand from often to almost always. As my empirical results indicate, this increase in responsiveness can be as high as .26.

Another important implication of the hierarchy results may be that circuit judges often have the ability to influence district court outcomes and district judges’ behavior if they so choose. In other words, given these results, why would remanding circuit courts not always issue published opinions with highly specific directions? The most likely explanation lies in the limitations of intermediate appellate court judging. The more specific an appellate court opinion is, the more time it likely takes to craft, particularly when considering that two or three judges must coalesce around that reasoning. The same sort of explanation likely holds for the decision to publish an opinion, since it requires, for example, more polished reasoning and more citations than its unpublished counterpart. Because of these constraints, circuit judges should selectively and strategically craft remanding opinions that are based on the anticipated response from the district judge, something that is confirmed, at least for some cases, by my supplemental multinomial analyses of appellate court opinion content. Of course, since my primary focus lies with explaining the district court’s outcome and not the circuit court’s behavior, further modeling of circuit court outcomes (including reversals without remands), the opinion-writing process, the resulting content, and even collegial bargaining over opinions should remain fruitful avenues of future inquiry.

Indeed, much remains to be explored, with circuit courts’ remanding influence on resulting district court policy, litigants’ behavior, and broader hierarchical impact all having the potential to be driven by strategic and ideological factors. One of these concerns a district case’s disposition type, a matter that has implications related not only to who wins but how. While most of the appealed cases in my data terminated through a nontrial adjudication (for example, motion to dismiss or motion for summary judgment), their postremand termination types vary greatly, with over half settling after the remand. This large number of postremand settlements makes it impossible to ignore how much the hierarchical interaction inherent in appeals and remands also affects litigants’ choices. Hopefully, these initial findings will inspire future work that explores litigants’ strategic decision making and settlement choices throughout a case’s de-
velopment since, as Hubbard (2013, p. 37) aptly argues, litigant-driven “selection effects can occur at multiple stages of litigation.”

While this study specifically explores decision making on remands from the courts of appeals—only one (nonrandom, albeit common) of the many ways in which lower federal court judges hierarchically interact—it also has implications for the longer-term relationship between these hierarchically situated judges. Will district judges alter their decision making in future cases because of a “failure” (reversal and remand) in the current case? Will the circuit court’s guidance in its remanding opinion serve as a signal that has lasting consequences well beyond the current dispute? These areas have, as of yet, received only limited attention from legal empiricists (for example, Smith 2006; Johnson 1987). The findings here, however, confirm that the motivations behind trial judging are very different from those behind appellate judging and, as such, may help reframe the discussion about what motivates and drives district judges’ decision making while serving at the bottom of the federal judicial hierarchy. And, more than this, the results seem to indicate that Jerome Frank’s (1963) oft-cited “upper-court myth” about U.S. courts is not such a myth after all, at least not when the appellate courts actively take steps to supervise and direct their judicial subordinates.
### APPENDIX

**Table A1.** Effects on Change in a Case's Winner from Preappeal to Postremand for Five Alternative Specifications: Logistic Regression Result

<table>
<thead>
<tr>
<th>Highly Specific Directions</th>
<th>Same Judge on Remand (1a)</th>
<th>Excludes Magistrates (1b)</th>
<th>Recoded Remand Settlements (1c)</th>
<th>Excludes Early Terminations (1d)</th>
<th>Panel Alignment (1e)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>.804*</td>
<td>.819*</td>
<td>1.787*</td>
<td>.869*</td>
<td>1.790*</td>
</tr>
<tr>
<td></td>
<td>(.32)</td>
<td>(.32)</td>
<td>(.41)</td>
<td>(.39)</td>
<td>(.41)</td>
</tr>
<tr>
<td>Published Opinion</td>
<td>.474*</td>
<td>.493*</td>
<td>.578*</td>
<td>.472*</td>
<td>.569*</td>
</tr>
<tr>
<td></td>
<td>(.17)</td>
<td>(.17)</td>
<td>(.16)</td>
<td>(.19)</td>
<td>(.16)</td>
</tr>
<tr>
<td>No Dissenting Opinion</td>
<td>.218</td>
<td>.361</td>
<td>.132</td>
<td>.270</td>
<td>.270</td>
</tr>
<tr>
<td></td>
<td>(.29)</td>
<td>(.28)</td>
<td>(.27)</td>
<td>(.33)</td>
<td>(.33)</td>
</tr>
<tr>
<td>Mixed Panel</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>.054</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(.16)</td>
</tr>
<tr>
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<td>-.417</td>
<td>-.403</td>
<td>-.118</td>
<td>-.401</td>
</tr>
<tr>
<td></td>
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<td>(.32)</td>
<td>(.31)</td>
<td>(.39)</td>
<td>(.31)</td>
</tr>
<tr>
<td>Outlier Circuit</td>
<td>.645</td>
<td>.373</td>
<td>.241</td>
<td>.806</td>
<td>.273</td>
</tr>
<tr>
<td></td>
<td>(.85)</td>
<td>(.83)</td>
<td>(.78)</td>
<td>(.93)</td>
<td>(.77)</td>
</tr>
<tr>
<td>Outlier Panel</td>
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<td>.335</td>
<td>.281</td>
<td>.409</td>
<td>.247</td>
</tr>
<tr>
<td></td>
<td>(.51)</td>
<td>(.49)</td>
<td>(.47)</td>
<td>(.59)</td>
<td>(.47)</td>
</tr>
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<td>Variable</td>
<td>Estimate</td>
<td>Std. Error</td>
<td>Estimate</td>
<td>Std. Error</td>
<td>Estimate</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>----------</td>
<td>------------</td>
<td>----------</td>
<td>------------</td>
<td>----------</td>
</tr>
<tr>
<td>Circuit Size</td>
<td>.021</td>
<td>(.01)</td>
<td>.018</td>
<td>(.01)</td>
<td>.016</td>
</tr>
<tr>
<td>Pro Se (Loser Below)</td>
<td>-.550*</td>
<td>(.22)</td>
<td>-.574*</td>
<td>(.21)</td>
<td>-.593*</td>
</tr>
<tr>
<td>High Status (Winner Below)</td>
<td>.170</td>
<td>(.23)</td>
<td>.189</td>
<td>(.23)</td>
<td>.403*</td>
</tr>
<tr>
<td>Plaintiff Appellant</td>
<td>-.241</td>
<td>(.30)</td>
<td>-.224</td>
<td>(.30)</td>
<td>2.016*</td>
</tr>
<tr>
<td>Early Initial Termination</td>
<td>-.464*</td>
<td>(.16)</td>
<td>-.371*</td>
<td>(.16)</td>
<td>-.490*</td>
</tr>
<tr>
<td>New District Judge</td>
<td>-.117</td>
<td>(.25)</td>
<td>-.143</td>
<td>(.22)</td>
<td>-.034</td>
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<tr>
<td>Civil Rights Case</td>
<td>.387</td>
<td>(.31)</td>
<td>.384</td>
<td>(.31)</td>
<td>.134</td>
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<tr>
<td>Business Case</td>
<td>.043</td>
<td>(.60)</td>
<td>.985</td>
<td>(.59)</td>
<td>-1.971*</td>
</tr>
<tr>
<td>Constant</td>
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<td></td>
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<td>$N$</td>
<td>820</td>
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<td>868</td>
<td></td>
<td>934</td>
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</table>

**Note.** Robust standard errors clustered on a case’s assigned district judge are in parentheses. The baseline issue is tort cases.

* $p \leq .10$; two-tailed test.

* $p \leq .05$; two-tailed test.
REFERENCES


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