

The Impact of Courts of Appeals on Substantive and Procedural Success in the Federal District Courts*

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*An earlier version of this article was presented at the 2008 Annual Meeting of the Midwest Political Science Association. I appreciate the invaluable advice and comments of Ryan Black, Pauline Kim, Andrew D. Martin, Margo Schlanger, and James Spriggs. I am grateful for the research assistance of Benjamin Guthorn, Laura Johnson, Sophie Fortin, Shadi Peterman, Gregg Re, and Annie Rushman. This project is supported by NSF Grant SES-0818751 and the Center for Empirical Research in the Law at Washington University. I am also thankful to the many district court chief judges who granted me fee exempt status to access electronic case materials from their district on PACER.

Abstract

While scholars have tested for the presence of powerful hierarchical constraints and effectiveness within the federal judicial branch, this scholarship has been restricted, largely due to data limitations, to federal appellate courts. Utilizing an original database of cases terminated in 29 federal district courts from 2000 to 2004, I assess the impact that courts of appeals have on district court decision making after a case is appealed to the circuit court and then returned to the district court on remand. I argue and find that appellate courts impact district courts, both in terms of the parties that win and the disposition methods that take place. In particular, the specificity of appellate court directions given to district courts are an important determinant of impact, as is the appellate court decision to publish the opinion remanding the case to the district court. These findings have vast implications, including for hierarchical control in the judiciary, appellate court bargaining, and perceptions of judicial legitimacy. At the same time, they also present a more nuanced theoretical picture of judicial impact.

Long ago, Richardson and Vines (1967, 597) complained that federal courts “have seldom been investigated as a system of interactions.” Today, this problem continues to plague judicial scholarship, particularly concerning lower federal courts. To help rectify this deficit, this article examines the influence that U.S. courts of appeals have on the outcomes and procedural mechanisms of federal district courts. While previous research has examined judicial impact within the federal hierarchy, little work has studied this topic without focusing specifically on the United States Supreme Court or on case outcomes.

By turning the focus to the impact of the federal system’s intermediate appellate courts on district courts, we can begin to understand the effectiveness of the federal judicial hierarchy in a way that centers on the institutional setting where most federal litigation takes place. Although scholars have long theorized about the impact that higher courts have on district court decision making (e.g Gruhl 1980; Richardson and Vines 1967; Baum 1980), this article provides some of the first direct and comprehensive empirical examination of this question, both in terms of case outcomes and with regard to the procedures used to dispose of the case.

Utilizing an original database of cases terminating in 29 federal district courts from 2000 to 2004, I assess the impact that courts of appeals have on district court decision making after a case is appealed to the circuit court and then returned to the district court on remand. I find that appellate courts do impact district courts, both in terms of the parties that win and in the disposition methods that take place. In particular, the specificity of appellate court directions given to district courts are an important determinant of impact, as is the appellate court decision to publish the opinion remanding the case to the district court. With the ability to speak to the nuances of impact, this study has implications not just for those litigating in these lower federal courts, but also for a broader view of the effectiveness of federal courts and hierarchical constraints and our overall perceptions of judicial fairness and legitimacy.

The Hierarchical Setting

Modern circuit courts are central actors in the federal appellate system. Indeed, while these courts have always served as the first line of appellate review in the federal system, they are increasingly “the de facto (if not the de jure) venue for final appellate review” (Hettinger, Lindquist and Martinek 2006, 89). While we can point to a number of reasons for this shift in appellate importance, the primary candidate is likely the Supreme Court’s shrinking docket, now with only 75-80 cases granted certiorari per year.

These appellate courts have been the subject of quite a bit of scholarship over the past few years, including on the decision to dissent (Hettinger, Lindquist and Martinek 2004), the presence of en banc decisions (Giles, Walker and Zorn 2006), the adoption of legal rules (Klein 2002), inter-panel dynamics (Cross and Tiller 1998; Boyd, Epstein and Martin 2007; Sunstein et al. 2006), and variation in decisions over time (Kaheny, Haire and Benesh 2008). While much of this work alludes to the hierarchical role played by circuit courts, this work largely avoids modeling the interactions of circuit courts with their judicial subordinates. Thus, although these studies have come a long way in informing us on these hierarchical encounters, they are not able to speak to the broader impact that courts of appeals have on lower court decision making. For approximately three-quarters of appeals heard by courts of appeals, “subordinate” means the federal district courts (Administrative Office of U.S. Courts, 2007).

While studying the decisions and actions of the federal courts in isolation may be interesting, the more important inquiry, or at least one with broader implications, is whether the actions and rulings of circuit courts have a lasting impact and can influence future law and litigant experiences and public perceptions of the courts. Indeed, the nature and health of the relationship of district courts to these appellate courts has “consequences both for immediate litigants and for shaping the legal landscape” (Hettinger, Lindquist and Martinek 2006, 27). Because of this, it is important to turn to the interactions that courts of appeals

have with their federal subordinates.

In the federal judiciary, the 94 district courts are the face of justice for most litigants.¹ In recent years, district courts have been disposing of well over 300,000 cases per year (Administrative Office of the U.S. Courts, 2007). Appellate courts, with a burden to hear cases in panels and provide lengthy and thoughtful reasoning for every disposition, are simply not equipped to handle the case management and record development that is done solely in the courts of first instance, the trial courts. Because of this critical filtering function, district courts are an invaluable institution within the judiciary. Their positions also enable them to make law (e.g. Mather 1995; Lyles 1995) and serve as primary implementers of national policies (e.g. Giles and Walker 1975; Vines 1964). And, yet, of all the federal courts, district courts have certainly received the least amount of attention from political scientists.

While a district court case is proceeding, the judge and the parties have no idea whether the case will ultimately end up before the appellate courts. This means that appellate courts likely serve as an ever-present influence in case dispositions. District court judges are likely to account for the preferences of the higher court judges when making their decisions (Randazzo 2003), and the litigants are likely to weigh their chances of success before these higher courts when deciding how to proceed in the lower court (and whether perhaps to actively pursue settlement) (see e.g. Priest and Klein 1984).

¹Like the circuit courts, district courts hold their jurisdiction based on their geographic location. Cases come to these courts not only based on original federal filings but also on removal from state courts. For details regarding the rules that govern district court filings and procedure, see the Federal Rules of Civil Procedure. Kim et al. (See also 2009) for other more general details on the business of these courts.

Judicial Impact in the Hierarchy

Impact in Theory

While we know some about the proclivity of appellate courts to affirm or reverse district court decisions (e.g. Hettinger, Lindquist and Martinek 2006; Haire, Lindquist and Songer 2003; Smith 2006) or to utilize the precedent of higher courts (e.g. Baum 1980; Hansford and Spriggs 2006), we know very little about the impact that courts of appeals decisions have on these lower courts. This latter inquiry is just as important since when the preferences of appellate courts have an impact on district courts, litigants, judges, and the public are all influenced, both in terms of actions and perceptions. If appellate courts impact district courts, we should expect that appellate courts will shape the legal policy that governs the decisions made in the lower courts. For litigants, this congruent hierarchical legal system provides stability and, often, predictability in expectations. And, since district courts are the ones handling the mass of cases and are the face of justice for litigants, the question of whether these courts, as subordinates, are constrained and impacted by circuit court preferences is important.

Theoretical frameworks from the study of courts and other political institutions provide a good backdrop for understanding when and why courts of appeals should have an impact on district court outcomes and proceedings. Many of these expectations come from the hierarchical nature of the relationship between these two judicial institutions, with courts of appeals standing in authority over district courts. The presence of this formalized relationship is particularly important in the judicial system. Since courts are generally believed to be weak, toothless implementers (Johnson 1979; Baum 1976), district courts, like other institutions external to the judiciary, need to credibly believe that their appellate superior will stand by and enforce its rulings. Under a theory of principal-agency interactions, superiors, like courts of appeals, have the potential, if effective, to control the output of their

subordinates, like district courts.

Principal-agency theory argues that due to limited resources and information, principals delegate tasks and decision making to agents (Holmstrom 1979). The theory continues that only properly incentivized agents will avoid shirking and effectively serve their principals (Miller 2005). Through this service, district courts can disseminate the legal policy preferences of the courts of appeals while the circuit courts only conduct “fire alarm” oversight (McCubbins and Schwartz 1984) through the appellate process. The lifetime appointments held by federal judges may make them imperfect vessels to act as agents in principal-agency theory, but because many of the characteristics native to principal-agency theory are present between the hierarchically-situated courts of appeals and district courts (such as effective monitoring and tools of punishment), we have evidence that strongly supports the application of the theory to district court-circuit court relationships (Haire, Lindquist and Songer 2003, 147).

Circuit courts can sanction district courts in a number of ways. A primary way that district judges are controlled 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 to the judge. Caminker (1994) argues that lower court judges want to avoid reversals because of the reputational costs. Very connected to this, circuit judges will on occasion use their opinions to personally criticize the work of the district judge in the case. It is far more common for circuit judges to be collegial and withhold personal statements about district court judges or to express support, even in the face of reversals or vacations,² so these criticisms, when they happen, are likely to be particularly troubling.

District court judges are also often highly motivated to be elevated to the courts of appeals (Caminker 1994; Hettinger, Lindquist and Martinek 2006), something that for district

²For example, in *Darst-Webbe Tenant Association Board v. St. Louis Housing Authority*, 339 F.3d 702 (8th 2003), the circuit court, in vacating the district court’s decision, noted that “[w]e sympathize with the difficult situation the district court faced in resolving this complicated case.”

judges is a very real possibility. Thus, the high likelihood of judge elevation from district courts to appellate courts, the existence of strong precedential norms, and the potential for appellate reversals of district court decisions (and the additional district court work required by remands) all work to transform district court judges into appropriate agents within principal-agency theory (Haire, Lindquist and Songer 2003, 147).

Impact in Action: Outcome-Based and Procedural

Studying the impact of higher courts on lower courts or political bodies has a long history in judicial politics. These studies are largely concerned with effects on policies and outcomes, with findings including that the Supreme Court influences the policies that administrative agencies and courts of appeals implement (Spriggs 1996) and that the Supreme Court impacts outcomes in lower federal courts (e.g. Baum 1978; Gruhl 1980; Johnson 1979; Songer 1987). This body of previous work certainly points to the potential for appellate courts to bring about a substantive impact in the policies and outcomes of their agents. When thinking about courts of appeals' impact on district court cases, these appellate courts will certainly have an impact if they cause a change in the party that ultimately wins the case.

Of course, impact can also be felt in more subtle ways than changing the outcome. For district court litigation, such an impact may come through the proceedings that take place and the ultimate method by which a case is disposed of. While litigant satisfaction and perceptions of fairness are surely at their highest when victory is achieved, those encountering the judicial system can come away from their experience with varying levels of satisfaction and perceptions of justice depending on the procedures in place. More generally, Tyler and Huo (2002) suggest that when legal processes are perceived as fair, people are more likely to perceive the law as legitimate. Within trial courts, parties will often choose to settle their cases rather than allow the court to control the case outcome. While this settlement process by necessity involves compromise, the component of control increases litigant satisfaction.

Similarly, Lind et al. (1990) find that litigants perceived trials as dignified procedures that produced fair outcomes.

If an appellate court's intervention can alter the procedures that lead to a case's termination, surely this too is impact that litigants can appreciate. Settlement and even trial allude to a more "fair shot" of justice, enabling litigants to come away from the judicial system, even as losers, with a sense of fairness and a feeling that the legal system embodies legitimacy and provides an opportunity for them to air their disputes. Impact of this typology may even be more critical for federal courts to embody, since this allows the judiciary to maintain an influential, policy making role over American society and be perceived as legitimate institutions – a characteristic necessary for judicial success and stability (see Gibson, Caldeira and Baird 1998).

Tools of Impact

While an ideal system might allow district courts to always perfectly perceive the preferences of courts of appeals, changing preferences, along with shifting court membership, random appellate panel assignment, and an evolving external environment, mean that some degree of uncertainty will exist. Written opinions from circuit courts can serve to help close this gap of uncertainty. Courts of appeals have a number of ways to signal their preferences to lower courts and impact the decisions made in these courts, the most explicit means of which is likely through written opinions. Through these opinions, appellate courts can denounce lower court behavior and legal interpretation, signal changing preferences, develop legal parameters, and provide instructions for future decision making.

The content of appellate opinions can vary greatly. While the results of this are wide-reaching, one major implication is that lower courts, using these opinions as guidance in proceedings below, will have varying amounts of discretion in how they carry out the circuit

courts' mandates. And, 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). When courts of appeals write opinions with very specific directions as to, for example, the procedures and case development that need to take place in the trial court, lower courts have limited discretion in the actions that they can take while remaining in good favor with the higher court. However, highly specified decisions are costly for appellate courts and tend to be inflexible (Spriggs 1996). And, particularly in the context of remands, highly specific opinions require courts of appeals judges to step out of their traditional role as appellate judges and instead, think as if they were trial judges. As opinions are written with less specific directions, district courts pick up increasing amounts of discretion on the behavior that they can partake in.

Hypothesis 1a (Outcome Model): As the circuit court provides increasingly specific directions, we should be more likely to see a change in the case's winner from pre-appeal to post-remand.

Hypothesis 1b (Procedures Model): Highly specific directions should decrease the likelihood of a case changing termination procedures. Excluding highly specific directions, more opinion specificity should increase the likelihood of a case changing termination procedures.

In addition to the language utilized in its decisions, the circumstances surrounding appellate court opinions can serve to signal their strength to lower courts. For example, circuit courts of appeals can mandate whether their opinions should be published. Although each circuit has different rules with regard to opinion publication, the tone and content of these rules is essentially the same: the circuit panel may designate a decision as "not for publication" when it is determined to not have precedential value (e.g. 11th Circuit R. 36-2 and IOP 6). Until 2007, each circuit set its own rules on if and when unpublished opinions could be cited. Starting in 2007, the Federal Rules of Appellate Procedure now mandate that all unpublished circuit decisions can be cited by parties (Fed. R. App. Proc. 32.1). The ability to designate decisions as unpublished, even under the new rules of citation, mean that a circuit panel is declaring an opinion to be of less long-term value and general utility.

Hypothesis 2: A circuit court's decision not to publish an opinion should decrease the likelihood of impact.

Similarly, judges serving on a panel with one another reserve the right to dissent from the majority's opinion. Dissenting opinions signal that there was discord among the circuit judges in resolving the case. They may also indicate to a district court judge that there is room to shirk and that there may be limited repercussions if he fails to implement the changes that the majority opinion specifies. To put it another way, 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). And particularly for a district court judge observing the opinions of a circuit panel, dissensus may also impart doubt that the panel majority's opinion represents the views of the circuit majority. The presence of a dissenting judge at the courts of appeals may negate the ability of the panel majority to impact district court decision making. By stating reasons for his disagreement with the majority in writing, the dissenter provides a district court judge, perhaps already unhappy with the stigma of reversal, hope that his case management and outcome preferences need not sway (entirely) with the directions of the appellate panel.

Hypothesis 3: The presence of a dissenting opinion should decrease the likelihood of impact.

In thinking about the relationship between these courts, we would be remiss to not consider ideology and its possible dampening effect on impact. A long line of judicial scholarship posits that federal judges at all levels make decisions based, at least in part, on their policy preferences (e.g. Segal and Spaeth 2002; Rowland and Carp 1996). In the context of impact, how much of an impact courts of appeals have through intervention in a case and how willing district courts are to follow the directives of circuit courts can arguably be explained by how similar the ideological interests of these actors are. Stated more formally,

Hypothesis 4: An increase in the ideological distance between the district court judge and the circuit court judges (in the majority) should decrease the likelihood of impact.

Data & Methods

To capture the impact that courts of appeals have on district court decision making, I turn to a newly collected dataset of 1,045 cases remanded to 29 federal district courts from the circuit courts of appeals. These cases are an ideal outlet for examining impact both in terms of case outcome and, as an alternative measure of litigant satisfaction, in terms of the differing procedures utilized in the latter outcome.

Previous studies of impact related to district courts have been hampered by data limitations. While traditional studies of judicial impact reflect on the movement of a case through the judicial hierarchy or the positive citation to appellate decisions by lower courts, such a research design is troubling with regard to federal district courts. Most district court cases resolve via settlement, so there simply is no judge decision or opinion. For those cases terminating by some alternative means, judges have no burden to author opinions or if they choose to write, publish those opinions, meaning that using traditional research techniques, there will often be no written record of the impact of appellate decisions on a district court outcome. Scholars usually search sources such as *Lexis-Nexis* or *Westlaw* for their cases, but, again, these sources will not reflect the presence of cases terminated without published opinions.

The research designed employed in this study enables me to study the impact that courts of appeals have on all types of district court cases — even those that end in settlement. To do this, I identified the population of district court data using the Federal Judicial Center’s (FJC) Integrated Databases for 2000-2004 compiled by the FJC from standardized filing and termination information reported from district court clerks of court for *every* case terminated in the district courts. These data were then merged with the corresponding data from the Appellate Terminations and Pending Databases (also from the FJC), thus yielding the population of cases that were appealed from the district courts to the courts of appeals. From this list of cases, I collected the circuit court method of disposition to find all final

appeals that were eventually remanded to the district court (reverse and remand, vacate and remand, and partial versions of each). After a case was identified as having a remand, the dispositions of the case in the district court before and after the appeal was collected. All case coding was conducted using district court and appellate court dockets as well as courts of appeals opinions, and where necessary to surmise the method of case termination, district court orders, memorandums, and opinions.

This project seeks to improve on the data collection shortcomings of previous projects studying some aspect of district court decision making, thus enabling the findings of this research project to be both generalizable and wide-reaching. To do this, I collect a breadth of data along a number of continuums, including data from 30 district courts across 13 broad issue areas. Many existing studies analyze only a small number of districts (e.g. Waldfoegel, 1998, SDNY; Smith, 2006, DDC). In the past, before electronic case dockets were available, researchers had to make copies of individual dockets in each district’s courthouse. With today’s nearly universal reliance on PACER (“Public Access to Court Electronic Records”) by district courts, such geographic limitations are no longer necessary. As a result, this study collects data on an unprecedented number of districts across all multi-member circuits, something that is potentially very important given the local norms that exist within individual districts. As displayed in Table 1, data are collected from 29 of the 94 federal district courts, and all of the traditional, geographically-based circuit courts but the Circuit Court of Appeals for the District of Columbia are represented. The districts included in the study were selected simply because they provide circuit and geographic diversity and because the chief judges agreed to provide me fee exemptions for studying the case materials from their courts.³

³Note that of the district courts to be studied here, the chief judges (who granted me free PACER access) have varied ideological backgrounds (one Carter appointee, ten Reagan appointees, four Bush I appointees, ten Clinton appointees, and four Bush II appointees).

<i>1st Circuit</i>	<i>2nd Circuit</i>	<i>3rd Circuit</i>	<i>4th Circuit</i>	<i>5th Circuit</i>	<i>6th Circuit</i>
DME	SDNY	MDPA	DMD	NDTX	NDOH
DRI	EDNY	DDE	WDNC	EDLA	EDMI
			EDVA		WDTN
<i>7th Circuit</i>	<i>8th Circuit</i>	<i>9th Circuit</i>	<i>10th Circuit</i>	<i>11th Circuit</i>	
NDIL	EDMO	WDWA	DCO	MDFL	
NDIN	NDIA	CDCA	DKS	NDFL	
	DSD	DMT	NDOK	NDGA	
				MDAL	

Table 1: The 29 federal district courts, arranged by their circuit, included in the study.

For many years, scholars studying district courts focused only on the small number of cases with decisions published in the Federal Supplement. For a district court judge, the decision to publish a decision is wholly discretionary, and the resulting published cases appear to be in no way a random sample of all district court decisions (Songer 1988; Siegelman and Donohue III 1990; Swenson 2004; Ringquist and Emmert 1999). Following in the footsteps of these scholars recognizing the potential import of unpublished district decisions, and, by encompassing settled disputes, cases that yield neither published nor unpublished opinions, along with those terminated via court oversight, this project has potential for broad applicability. A simple examination of the disposition types within the present study, depicted in Figure 1, clarifies how much data would be lost if this study were to be conducted in the traditional fashion – through searches of case opinions on *Lexis* or *Westlaw*. While a very small proportion of the data end in settlement prior to appeal, approximately one-half of the cases terminate via settlement after remand. These settled cases would be invisible to scholars using traditional techniques. And, yet, as will be discussed in greater detail below, these settlements are a part of the impact that courts of appeals have on district court decision making.

Nearly all work on district courts limits itself to narrow issue areas. Although this limitation is frequently appropriate when one’s research is driven by a substantive question

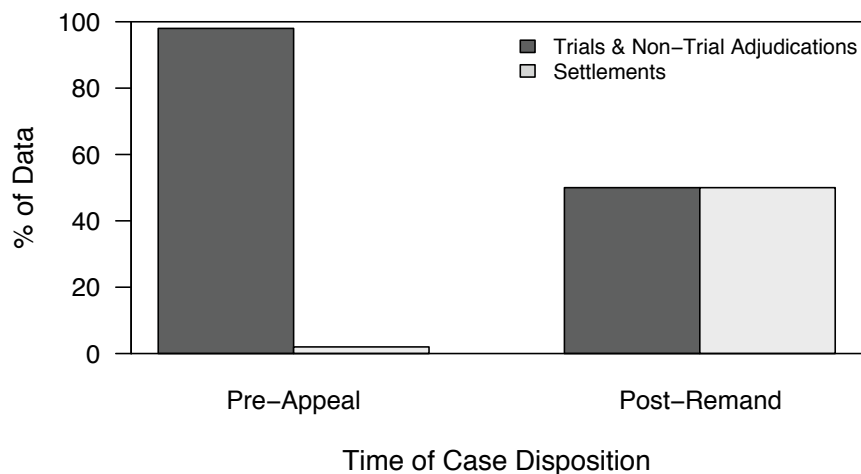


Figure 1: Percentage of cases in data terminating by settlement or trial/non-trial adjudication, pre-appeal and post-remand. Cases terminating by settlement are represented in light grey and those ending by trial or non-trial adjudication are depicted in dark grey.

based on a particular area of law, such work has limited generalizability. This is particularly the case for work that seeks to address broad issues of a legal and/or political nature. With this in mind, this project will study three large issue areas, identified based on their Nature of Suit (NOS) code.⁴ To be studied here are: civil rights cases, personal injury torts, and a variety of business-related cases, including general contracts, copyrights, patents, and trademarks.⁵

Dependent Variables

As noted above, the impact of courts of appeals can happen both through changes in outcomes (“substantive impact”) and through changes in the procedures by which cases terminate (“procedural impact”). To study these two types of impact, I rely on two dichotomous

⁴The NOS code is a issue area classification for a case. It is assigned to the case based on the identification by the plaintiff’s attorney filing the case when he fills out his Civil Cover Sheet.

⁵The exact NOS codes are: civil rights cases (440, 442, 443, 444), personal injury cases (310, 320, 340, 350, 360), and business-related cases (190, 820, 830, 840).

dependent variables: `change in winner` and `change in disposition type`.

The variable for `change in winner` is coded as 1 when the district court case prior to appeal has a different winning party than after remand and 0 otherwise. Generally speaking, 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 winner is the party whose outcome is affirmed on appeal. For cases ending in settlement, the plaintiff is defined as the winner, as is the case post-remand when there is mixed relief. Approximately 58 percent of the cases in the dataset have a change in the case's winner from pre-appeal to post-remand.

Turning to `change in disposition type`, this variable represents a change from one of three types of disposition to another from the termination of the case prior to appeal to after remand. The three types of disposition are settlement, non-trial adjudication, and trial. Prior to appeal, nearly all cases (85 percent) terminate by non-trial adjudications (generally summary judgments and involuntary dismissals) while after remand, the majority of cases (just over 50 percent) end with settlements. Within my data, over 61 percent of the cases have a change in disposition.

Independent Variables and Expectations

Variables of Interest

As noted above, opinions (and the directions within), publication status of the opinions, and written dissents from opinions are all means by which circuit courts may be able to impact district court decision making and procedures on remand. To account for the specificity of directions in appellate court opinions, I code four dummy variables. These variables, `High Opinion Specificity`, `Medium-High Opinion Specificity`, `Medium Opinion Specificity`, and `Low Opinion Specificity`, represent four different levels of specificity in the directions

within circuit court opinions. The definitions of each of these four levels of direction specificity, along with examples characterizing them, are provided in Table 2 and the inter-coder reliability for the coding of this variable is provided in Table 3. Within the data, 61 percent of the cases are considered to be of low specificity, while 18 percent are of medium specificity, 11 percent have high specificity, and 10 percent are of medium-high specificity.

Specificity of Directions	Opinion Characteristics	Representative Examples
High	Explicit directions on what outcome district court should reach on remand	“Remand with instructions to dismiss the federal action”
Medium-High	Specific directions given with regard to some district court actions or partial outcomes, but the court of appeals does not direct the final outcome of the case	“Remand for a new trial limited to age discrimination claims”; “On remand the district court should award costs to Metropolitan or state reasons why costs should be denied”
Medium	Directions regarding procedures that should take place but no explicit directions on the final or partial outcomes of the case	“Remand for further discovery to allow 100% Girls Brand the opportunity to discover evidence of Hilson’s possible wrongful conduct in refusing to consent to the proposed sublease”
Low	The court of appeal’s directions on remand are either non-existent (other than the statement that the previous outcome is nullified) or merely provide suggestions or hints on what might need to be considered as the case progresses	“Remand is required to resolve factual questions consistent with this opinion”; “Remand for further proceedings consistent with this opinion”

Table 2: The specificity of directions in courts of appeals opinions for the cases in this dataset. Representative examples of each type of specificity are drawn from the author’s data.

Opinion Specificity	Expected Agreement (By Chance)	Observed Agreement	Kappa
High	77%	97.6%	0.89
Medium-High	79.5%	93.8%	0.7
Medium	66.4%	89.3%	0.68
Low	53%	89.6%	0.78

Table 3: Inter-coder reliability for the coding of Opinion Specificity. The Kappa statistic ranges from 0 to 1, with 1 being a perfect value.

Opinion publication status is coded dichotomously, with `unpublished opinions` coded as 1. Within my data, `unpublished` cases account for 43 percent of the cases. Similarly, the presence of a `dissenting` opinion is coded dichotomously. 8 percent of the cases within the

dataset have the presence of a **dissent**.

Finally, I code **Difference in Ideology** to operationalize the ideological-dampening effect hypothesis. 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 the Giles et al. (2001) and Epstein et al. (2007) papers. In short, these scores are the Poole and Rosenthal NOMINATE Common Space score (available at <http://voteview.com/readmeb.htm>) of the senator from a judge's home state (or average of the two senators) if that senator(s) is from the same party as the appointing president. If neither senator is from the same party as the president, the judge is assigned the Common Space score of the appointing president. The resulting computed ideology scores range from -1 (the most liberal) to 1 (the most conservative).

For the district court judges in my dataset, the JCS score is collected for the judge presiding over the case at the termination of the case after remand. For the cases in the dataset where the assigned district court judge in the case is a magistrate judge rather than an Article III district court judge, an additional step was taken to capture ideology. Since magistrates are appointed to their position (for eight years) by a vote of the active judges in their district, I code the ideology of these actors by taking the median district court judge JCS score for the year that they assumed their position. For the courts of appeals score, I collected the individual JCS scores (available from Epstein et al. 2007) for the judges in the majority and then computed the median for each majority panel. **Difference in Ideology** values range from 0 to 1.07, with a median ideological difference of 0.365.

Control Variables

While the opinions of appellate courts and ideological differences may be a strong impetus of impact, other institutional factors and actor characteristics may also influence changes in

outcome and procedures in federal district courts following a remand. Because of this, I control for a number of likely suspects across these areas.

Ninth Circuit: With so few of their cases subject to Supreme Court review, district court judges are likely to rarely forgo the preferences of their immediate appellate court principal, the circuit court, for the potential preferences of the Supreme Court. It is possible, however, that district court judges serving in the Ninth Circuit are far more cognizant of the preferences of Supreme Court justices. It is this circuit, of course, that receives a large amount of Supreme Court attention, largely in the form of reversals. Because of this high reversal rate, district court judges, both in terms of precedent and with regard to elevation considerations, may be hesitant to attach themselves too closely to the circuit.

Female District Judge: Female judges are likely to want to increase (or not decrease) their chances of elevation to the circuit courts (since appointing qualified women to these courts is such a politically hotbed issue). In addition, given the theories on female decision making (see also Sherry 1986; George 2001; Resnik 1988; Karst 1984; Gilligan 1982), it is quite plausible that female district court judges, based upon their social and background experiences and their communication and problem solving skills, will be more apt to dispose of the cases before them by settlement than will male judges. This propensity may increase even more so on remand after circuit courts have opened up the opportunity for additional case proceedings.

District Judge Years on Bench: Measured in years as a district court judge, this variable provides an important measure of the differing concerns that district judges may have as they serve on the bench. If elevation to an appellate court is a judge's desire, we would expect judges that are relatively new to the bench to embrace outcome change following circuit court intervention in a case. After being on the bench for many years, however, a district judge's chances of elevation are likely to greatly diminish, and so too might the judge's concerns about following the circuit's preferences for change. Within my

data, this time on bench variable ranges from less than one year to 42 years, with a median of 10 years. When it comes to procedural change, newer judges may be less accustomed to the features that enable a change in case dispositions, especially when it comes to encouraging parties to settle.

Magistrate Assigned Case: Magistrates, serving as the presiding judge in civil cases by the consent of the parties, are likely to desire elevation as well – only this time they want appointment to the district courts. And, indeed, many current district court judges were once magistrates. These judges are likely to be particularly concerned about avoiding drawing negative attention to themselves. This should lead them to be more likely to change case outcomes on remand. Similarly, because of their training in handling pre-trial matters and presiding over things like settlement conferences, these judges are also likely to help cases resolve by a changed disposition type on remand.

New District Judge on Remand: A number of circuits, by default, assign cases to a new district court on remand. When this is the case, we should expect that change will be more likely. A new judge will not be tied to the decision making made by the original district judge in the case and thus will be more likely to implement change on remand.

Pro Se Litigant (Loser Below): By their very nature, these litigants are weak. They represent themselves and often file frivolous lawsuits. In this dataset, their disputes may not be wholly frivolous (the circuit courts do reverse the trial courts' decisions to dismiss the cases), but it is likely that the cases are often proceeding solely to provide a few additional constitutional protections. In my data, nearly 21 percent of the cases have a pro se litigant (generally plaintiff) that lost the dispute below. The presence of these weak parties in a case should make change less 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 only one area.

Modeling & Results

Both impact inquiries will be modeled using probit regression. Turning first to an inquiry of substantive impact, where the dependent variable is **change in winner**, the results are provided in Figure 2. The model does a decent job of predicting outcomes, with nearly 61 percent correctly predicted and a reduction of error of over 5 percent.

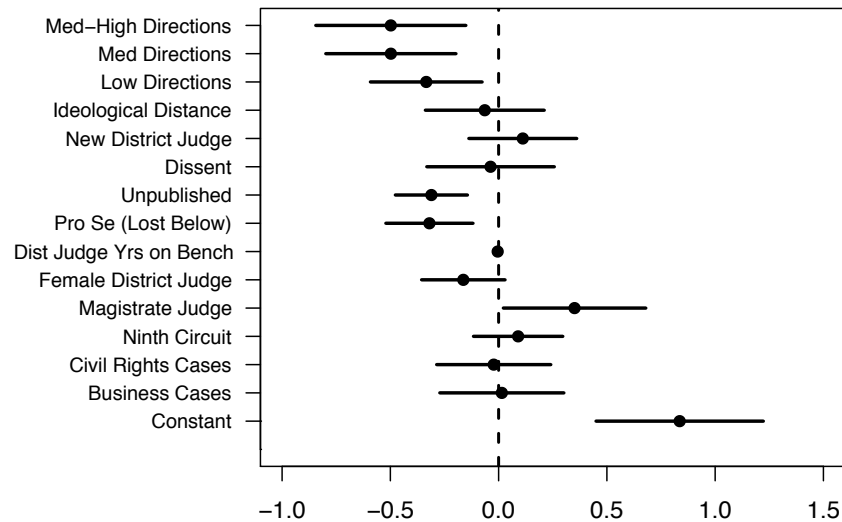


Figure 2: Nomogram of probit regression results for the effects on change in a case's winner from pre-appeal to post-remand. Solid dots represent the coefficients on the estimates while the solid line around those dots are a 95 % confidence interval. When the confidence interval intersects with the dotted vertical line located at 0, the estimate is not statistically significant at ($p < 0.05$, two-tailed). **High Opinion Specificity** and **Tort Cases** are baseline variables and are excluded from the model. A traditional regression table is available in the appendix.

In contrast to predictions, some of the variables do not reach statistical significance. However, for a number of the variables that are central to this study, the results are statistically significant and in the predicted direction. These include highly specific appellate court directions, unpublished circuit court opinions, and the presence of two actors: a magistrate assigned to the case and a weak pro se litigant. To grasp a better understanding of the substantive effect of these variables, I present an array of predicted probability graphs in

Figure 3.

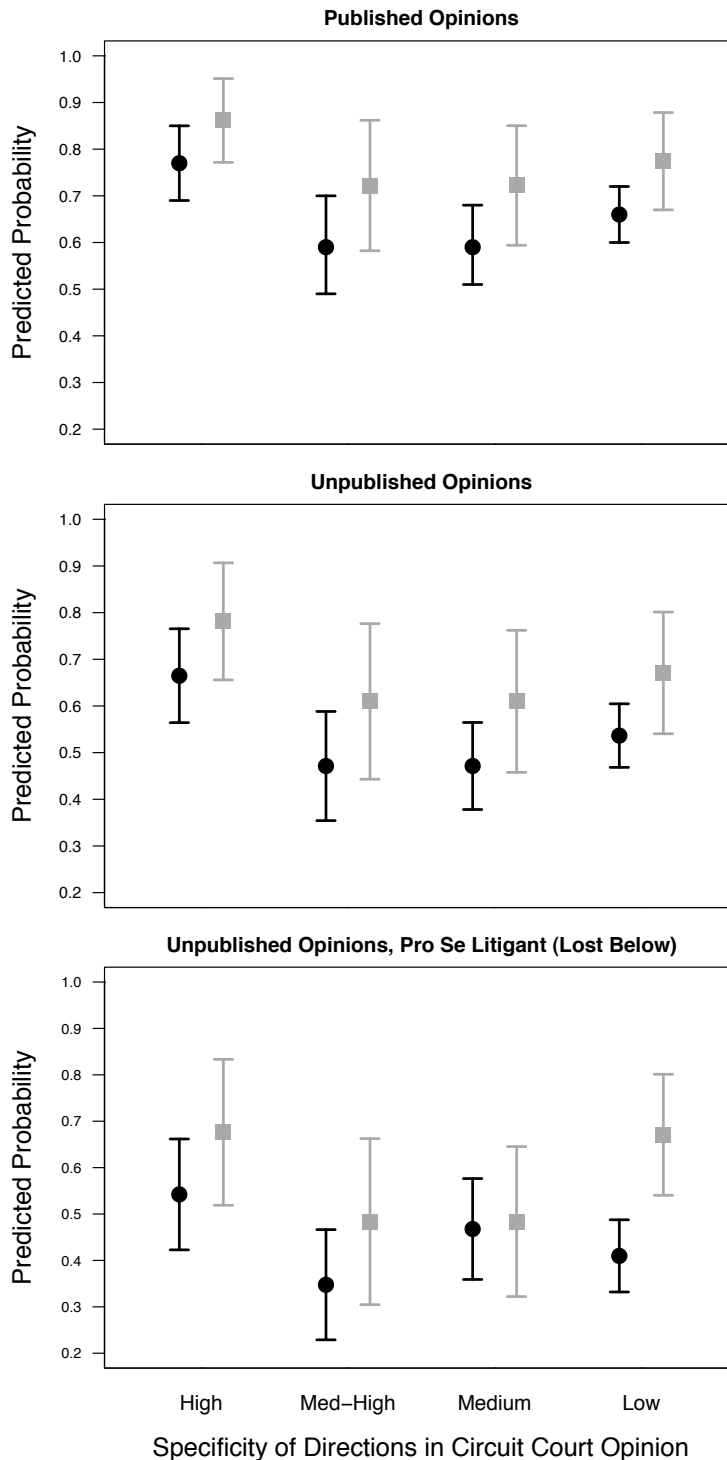


Figure 3: The predicted probability that a case will have a change in winner from pre-appeal to post-remand. The top panel represents cases with published opinions, the middle panel depicts unpublished opinion cases, and the bottom panel shows unpublished opinion cases with a weak, pro se litigant. The black markings represent cases with a district court judge presiding over the case, while the grey markings represent cases where a magistrate has been assigned to resolve the case. The circles/squares represent the mean predicted probability of change while the lines represent 95% confidence intervals on those predictions. All other variable values are held at their mean or modal values.

Figure 3 plots the predicted probability of a modal case having a change in winner based on the four types of circuit court opinion specificity present in a decision (both published and unpublished). The graphic includes the probability of change both when a traditional district court judge is assigned to the case (black line) and when a magistrate officially presides (grey line). In the top panel of Figure 3, we can see that for cases remanded to district courts with a published circuit court opinion with highly specific directions, the probability of the case winner changing from prior to the appeal is nearly 0.8. This number increases to 0.85 when the district case is presided over by a magistrate rather than an Article III district judge. When the circuit court opinion has less specific directions, this number falls to between 0.6 and 0.65 for cases assigned to district judges and 0.7 to 0.8 for cases assigned to magistrates. These numbers include a slight increase in the probability of change for those cases with non-specific directions (e.g. “for proceedings consistent with this opinion”) (as compared to those cases with specificity of directions in the middle range).

The trends for those cases represented in the middle (for unpublished circuit court decisions) and bottom (for unpublished opinions with the presence of a pro se litigant who lost below) panels of Figure 3 are similar to those for the top panel; however, across the board, the predicted probabilities for change in case winner are substantially lower. For example, for the middle panel, we can see that highly specified opinions presided over by a district judge have a probability of change around 0.65. For the bottom panel, this number drops to around 0.55.

These depictions help clarify the impact that courts of appeals have on district courts. In particular, the opinions of circuit courts are important determinants of the likelihood of change in district court outcome. When circuit courts provide very specific directions in their opinions, district courts are far more likely to change the cases’ outcomes than when the circuit courts leave the district courts plentiful discretion for action.

Similarly, a circuit court panel’s decision to publish an opinion has a strong effect on

district court outcome change. The predicted probabilities for modal cases with unpublished circuit opinions are depicted in the middle panel of Figure 3. No matter the level of circuit court opinion specificity, an unpublished opinion makes it about 10 percent less likely that the district court outcome will change from pre-appeal to post-remand.

The characteristics of the actors is important to impact as well. Nearly across the board, magistrates presiding over district cases are more likely – anywhere from 5 percent to 30 percent – to have their cases change in outcome than traditional district judges. With solid excuses to be elevation-minded, it is no surprise that these judges pursue a course of action that avoids controversy and makes them appear as good agents. It is also consistent with predictions that cases with weak litigants with no formalized representation are far less likely than modal cases to change outcomes.

I turn next to a model of procedural impact, where the dependent variable is **change in disposition type**. The results of this model are presented in Figure 4. This regression model has a 68 percent prediction rate and reduces error by nearly 17 percent.

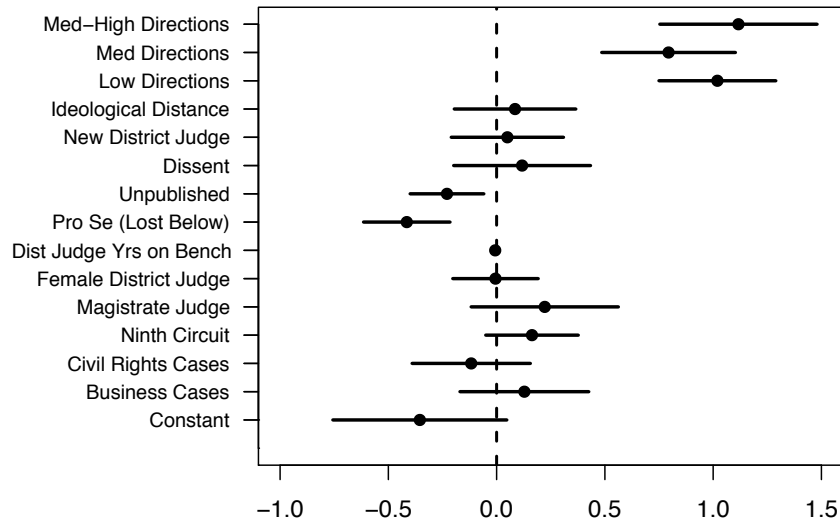


Figure 4: Nomogram of probit regression results for the effects on change in a case’s termination method from pre-appeal to post-remand. Solid dots represent the coefficients on the estimates while the solid line around those dots are a 95 % confidence interval. When the confidence interval intersects with the dotted vertical line located at 0, the estimate is not statistically significant at ($p < 0.05$, two-tailed). **High Opinion Specificity** and **Tort Cases** are baseline variables and are excluded from the model. A traditional regression table is available in the appendix.

Once again, my expectations are met with mixed results. I find no support for my ideological distance hypothesis, as is the case for my expectations with regard to district court actors (time on bench, new district judge on remand, magistrate, female) and Supreme Court threat of intervention (Ninth Circuit). However, appellate court opinions are once again a major determinate of impact. The same is true for weak litigants.

Based on the changing values of these significant variables, the predicted probabilities of change in disposition type are depicted in Figure 5. As with the substantive impact figure, the plots are arranged by the changing levels of appellate court opinion specificity, the publication status of opinions, and the presence of a weak pro se litigant. Since the presence of a magistrate assigned to the case does not have a statistically significant effect, the plots only present the probabilities for cases presided over by magistrates. At first glance,

these predicted probabilities seem to indicate that courts of appeals may *not* have an impact on changing the procedures that lead to a case’s termination. After all, for opinions that are highly specific in nature, the likelihood of disposition method change ranges from only 10 percent to about 30 percent. However, cases with very specific directions, by their very definition, include directions on how the cases should be disposed of (see Table 2). Since the appellate courts are not likely to direct that the case be disposed of by, for example, settlement, these circuit courts are envisioning termination via non-trial adjudication. Since most cases going to the circuit courts on appeal reach there by non-trial adjudication, seeing a change in disposition in these circumstances is not likely.

Because of this, I instead turn the focus to the three other degrees of circuit court opinion directions and the procedural impact connected to them. In so doing, we can see that circuit court opinions of “medium-high” specificity are particularly good at bringing about procedural change in district courts. Less specific appellate court opinions have somewhat lower levels of procedural impact, with the likelihood of disposition change being 5 to 10 percent lower in these cases.

Just as with outcomes, the decision of an appellate court to publish its opinion has a very strong impact on the change in case procedures following remand. Cases with published appellate opinions are at least 10 percent more likely to have a change in disposition type following remand. The combined effect of the choice of whether to publish an opinion and how specific to be in the directions given to the district court lead to quite a large procedural effect. A published opinion with medium high specificity has a 72 percent chance of leading to a change in the district court disposition method while an unpublished opinion with medium specificity has a 52 percent chance. When we account for weak, pro se litigants (the bottom panel of Figure 5, these disparities grow even further.

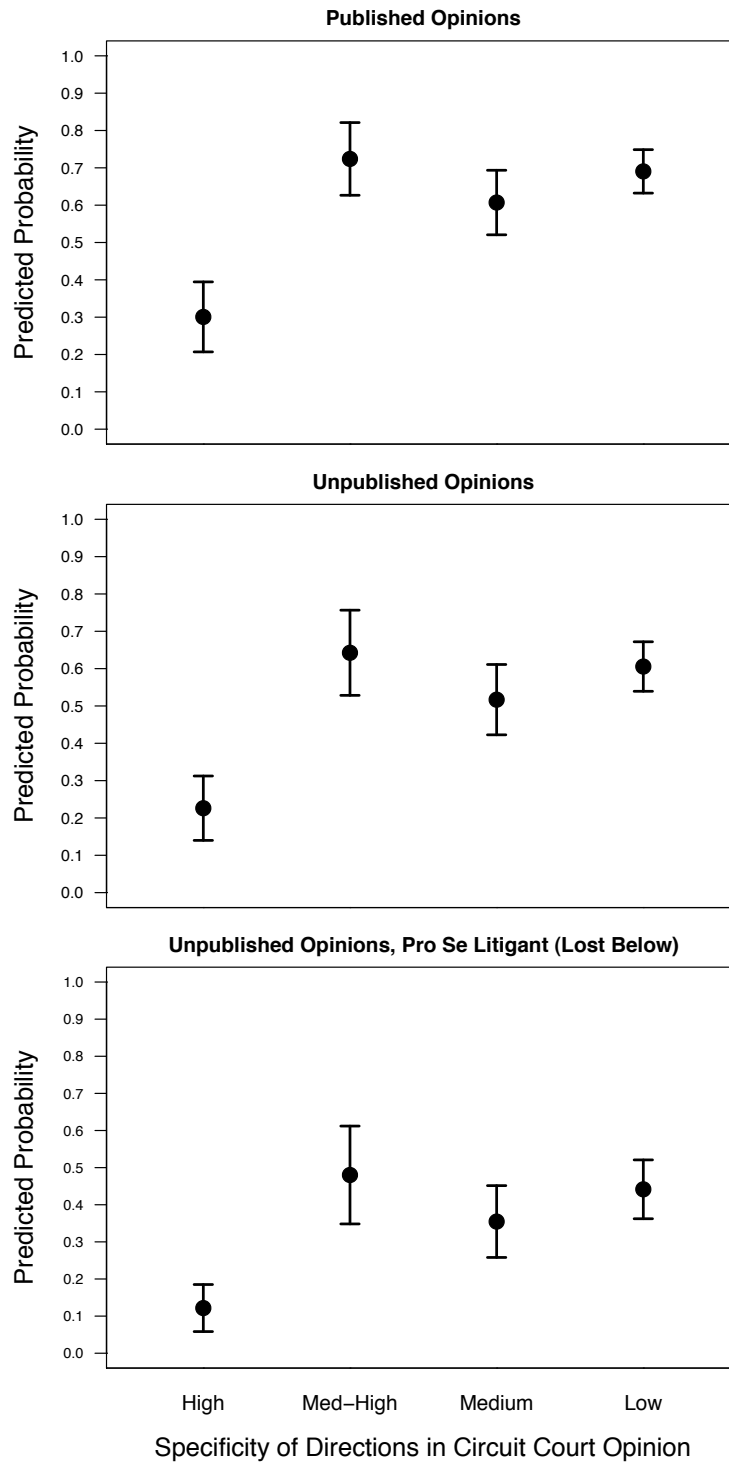


Figure 5: The predicted probability that a case will have a change in disposition type from pre-appeal to post-remand. The top panel represents cases with published opinions, the middle panel depicts unpublished opinion cases, and the bottom panel shows unpublished opinion cases with a weak, pro se litigant. The black markings represent cases with a district court judge presiding over the case. The circles represent the mean predicted probability of change while the lines represent 95% confidence intervals on those predictions. All other variable values are held at their mean or modal values

Discussion

This article attempts to bring new insight into the ever-present question of judicial politics — how much of an impact do higher courts have on the decision making of lower courts. The research design and data provide a fresh and comprehensive approach to this question, enabling it to be assessed for a systematic sample of district court cases for both substantive and procedural impact. The results are quite illustrative about the overarching impact that courts of appeals have over their hierarchical agents—the federal district courts. After comparing district court cases pre-appeal to post-remand, this impact comes in two important ways: a change in who wins the case and a change in the method by which the case terminates. I find that courts of appeals, through the specificity of directions provided in their opinions and the decision about whether to published their opinions, have a substantial impact on district courts. By using these tools, courts of appeals can increase the likelihood of a case having a change by nearly 30 percent.

The implications of these findings are vast. These results indicate, for example, that the federal judicial hierarchy is healthy and that, generally speaking, district court judges are good and faithful agents that tend to defer to their superiors' presumed preferences even when they are given vast discretion. Similarly, these results should give hope to those in favor of predictability and stability in the law as directed by the appellate courts.

The findings also indicate that the politics of judicial appointments remain an important concern. Although the variables for ideological difference were not statistically significant, the fact that the appellate courts were able to implement their preferences on district courts *regardless* of how ideologically distant those lower court judges were from them means that politically extreme circuit judges (or panels) may be able to implement sweeping changes in the trial-level policies of our judiciary. At the same time, the strong findings with regard to the specificity of directions in circuit court opinions indicate that opinion language matters. This should thus provide an additional layer of complexity to existing research on the

bargaining that exists (or is theorized to exist) among circuit judges over the texts of their opinions.

And, last but certainly not least, these results are important for our overall perception of the courts. Generally speaking, the federal judiciary is a political institution that is held in high regard by the public (Gibson 1989). With a finding that circuit courts are able to impact district court disposition procedures — and do so in a way that is likely to increase litigant satisfaction with the process — we should expect that perceptions of judicial legitimacy will be retained as long as the judicial hierarchy remains strong.

Appendix: Traditional Regression Tables

Probit Regression Results for Change in Winner

	Coefficient	Robust Standard Error
Medium-High Opinion Specificity	-0.498*	0.18
Medium Opinion Specificity	-0.498*	0.15
Low Opinion Specificity	-0.334*	0.13
Ideological Distance between COA and DC	-0.064	0.14
New District Judge on Remand	0.112	0.13
Presence of COA Dissent	-0.037	0.15
Unpublished COA Opinion	-0.310*	0.08
Pro Se Litigant (Loser Below)	-0.320*	0.10
District Judge Years on Bench	-0.004	0.00
Female District Judge	-0.163	0.10
Magistrate Assigned Case on Remand	0.351*	0.17
Ninth Circuit	0.090	0.11
Civil Rights Case	-0.023	0.13
Business Case	0.015	0.15
Constant	0.836*	0.20
Log Likelihood	-683.378	
Pseudo R ²	0.037	
Percent Correctly Predicted	60.57	
Percent Reduction in Error	5.29	
Observations	1045	

Table 4: Probit regression results for the effects on change in a case's winner from pre-appeal to post-remand. Statistical significance is represented with * (p<0.05, two-tailed). **High Opinion Specificity** and **Tort Cases** are baseline variables and are excluded from the model.

Probit Regression Results for Change in Termination Method

	Coefficient	Robust Standard Error
Medium-High Opinion Specificity	1.117*	0.19
Medium Opinion Specificity	0.794*	0.16
Low Opinion Specificity	1.020*	0.14
Ideological Distance between COA and DC	0.085	0.14
New District Judge on Remand	0.050	0.13
Presence of COA Dissent	0.118	0.16
Unpublished COA Opinion	-0.229*	0.09
Pro Se Litigant (Loser Below)	-0.415*	0.10
District Judge Years on Bench	-0.006	0.00
Female District Judge	-0.005	0.10
Magistrate Assigned Case on Remand	0.222	0.17
Ninth Circuit	0.163	0.11
Civil Rights Case	-0.117	0.14
Business Case	0.128	0.15
Constant	-0.355	0.20
Log Likelihood	-640.355	
Pseudo R ²	0.080	
Percent Correctly Predicted	68.04	
Percent Reduction in Error	16.92	
Observations	1045	

Table 5: Probit regression results for the effects on change in a case's disposition method from pre-appeal to post-remand. Statistical significance is represented with * (p<0.05, two-tailed). **High Opinion Specificity** and **torts** cases are baseline variables and are excluded from the model.

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