

---

# The Influence of Presidential Versus Home State Senatorial Preferences on the Policy Output of Judges on the United States District Courts

---

Susan W. Johnson

Donald R. Songer

While many of the decisions of federal district court judges involve the routine application of settled legal rules, a significant minority of their decisions present the judges with the opportunity to engage in judicial policy making. A considerable body of literature suggests that when faced with policy-making opportunities, the policy preferences of the judges exert a significant impact on the nature of those decisions. The present study explores the question of whose preferences are manifested in the policy-relevant decisions of the district court judges. In particular, we seek to determine the relative impact of the preferences of the major elites involved in the selection of federal district judges: the appointing president, home state senators of the president's party, and home state elites outside the Senate who are consulted when a president makes an appointment from a state whose Senate delegation is in the hands of the opposition party.

The analysis is based on all published decisions of the district courts in civil liberties, economic and labor, and criminal procedure cases decided between 1961 and 1995. We find that contrary to the expectations derived from the existing literature on district judge appointments, the political preferences of the appointing presidents are most closely related to the policy relevant decisions of the judges.

## Introduction

**T**he U.S. district courts represent the basic point of input for the federal judiciary and are the “workhorses” of the federal system (Carp & Stidham 1998:23). Since the vast majority of their decisions are not appealed, district judges often have the last say about most of the legal issues resolved in federal court. Those decisions increasingly extend to a host of new issues with controversial political implications: the availability of abortions, standards for defining obscenity, the quality of the air we breathe, requirements for affirmative action programs, standards for the maintenance of prisons, what plea bargains would be accepted in

---

The authors wish to thank Dr. Robert A. Carp and Dr. Ronald Stidham for graciously sharing their data with us. Address correspondence to Donald R. Songer, Department of Government and International Studies, University of South Carolina, Columbia, SC 29208 (e-mail: dsonger@sci.edu).

political corruption investigations like Watergate, and the admissibility of evidence from searches and confessions in high-profile criminal prosecutions (Goulden 1974; Rowland & Carp 1996). While many of their decisions involve the routine application of settled legal rules, a significant minority of their decisions, especially those published in the *Federal Supplement*, present the judges with the opportunity to engage in judicial policy making. A considerable body of literature suggests that when judges are faced with policy-making opportunities, their policy preferences exert a significant impact on the nature of those decisions (Carp & Rowland 1983; Rowland & Carp 1996; Richardson & Vines 1970; Rowland & Carp 1983; Peltason 1955).

The present study explores the question of whose preferences are manifested in the policy-relevant decisions of the district court judges. In particular, we seek to determine the relative impact of the preferences of the major elites involved in the selection of federal district judges: the appointing president, home state senators of the president's party, and home state elites outside the Senate who are consulted when a president makes an appointment from a state whose Senate delegation is in the hands of the opposition party.

### **The Appointment of District Court Judges**

"In form, the appointment of federal judges could not be simpler: they are nominated by the President and affirmed by majority vote of the Senate" (Richardson & Vines 1970:58). In practice, however, more actors are involved than just the president and the Senate sitting as a collective body, and the politics of the process varies in significant ways for judges nominated to different courts. Examinations of the politics of judicial selection have concluded that even at the bottom of the judicial hierarchy where local political forces have their greatest impact, the president is a key player (Carp & Stidham 1998; Goldman 1997; Richardson & Vines 1970; Rowland & Carp 1996). Nevertheless, the conventional wisdom is that the president's role in practice is more constrained in the selection of district court judges than in the selection of any other federal judges. A strong norm of "senatorial courtesy" existed throughout the twentieth century for the selection of district court judges (Harris 1953; Rowland & Carp 1996). Under this norm, if a nominee is unacceptable to a home state senator of the president's party, the Senate will usually fail to confirm the nominee. While senatorial courtesy's power is not absolute, it is a strong factor in Senate deliberations (Harris 1953; Fowler 1983). Even during the Reagan administration, when the White House was held by a president who was strongly committed to influencing the ideological makeup of the lower federal courts, Republican home state senators "had a virtual

veto power over unacceptable district court nominees from their states” (Rowland & Carp 1996:87). In fact, one early study of judicial selection concluded that “the Constitution does not give an accurate description of the selection process. . . . It would be more accurate to say that federal district judges are selected by the individual Senator or local party organization in the area in which they are to serve, subject to presidential veto” (Peltason 1955:31; see also Chase 1966:185; McFeeley 1987; Haynes 1944:23).

Under the informal norm of “senatorial courtesy,” any home state senator of the president’s party may block a nominee that he or she finds unacceptable. But while the home state senator may effectively veto the first choice of a president, the senator cannot dictate who the nominee will be. Consequently, the nominee finally announced is likely to be the product of informal negotiation and bargaining between the president and the home state senator. In fact, most senators perceive the process as an interactive, bargaining process in which senators and presidents “anticipate each others’ preferences and incorporate this anticipation into their selection strategies and criteria” (Rowland & Carp 1996:90; see also Slotnick 1984). Other elites appear to have similar perceptions. The administration, especially the deputy attorney general, is particularly careful to seek cooperation from home state senators in district court appointments (McFeeley 1987:15). Similarly, Grossman found that the American Bar Association’s Standing Committee on the Federal Judiciary viewed the prerogatives of the individual senators as the major obstacle to their increased influence in the selection of federal judges (Grossman 1965:157).<sup>1</sup> The precise degree of influence exerted on the final selection of the nominee appears to vary from nomination to nomination depending on the relative overall political standing and power of the particular president and senator involved and the importance that each attaches to the nomination relative to other political goals.

Another important ingredient in the nomination process is the relative degree of concern that the particular president and particular home state senators have in securing nominees who are ideologically similar to their own orientation. Both presidents and home state senators pursue a mixture of legal, partisan, and policy or ideological goals in the search for district judge nominees. Goldman (1997) found that for Truman and Eisenhower, their partisan agenda dominated their involvement in the selection of lower court judges. For Reagan and Franklin Roosevelt, however, remaking the judiciary to advance their policy and ideological preferences was the primary concern. Similar diversity is

---

<sup>1</sup> It might be noted that President George W. Bush ended the practice of a pre-nomination role for the ABA.

evident in the agendas of home state senators in the judicial selection process. Interviews with senatorial staffs suggest that there is substantial variation among states in the extent of the personal involvement of the senator (Rowland & Carp 1996). States also varied “a great deal” in the balance between concern for legal merit, concern for political patronage, and the concern with the policy views of the nominee (Rowland & Carp 1996:109).

In summary, the selection of district judges is the result of a bargaining process between the president and senators, particularly the home state senators of the president’s party. However, the form and content of that bargaining has many variations. Since presidents and senators alike are concerned with both partisan and ideological goals, filling vacancies on the district courts is a political process that has a substantial impact on the representation of political values in the court system. A review of the judicial selection system thus leads to the expectation that the preferences of district court judges will reflect the interaction of the preferences of the appointing president and the preferences of home state partisan elites. When there is a home state senator of the president’s party, the literature suggests that the preferences of the judge might more closely reflect the preferences of the senator than of the president.

### **Evidence of the Effects of Presidential and Home State Preferences**

Early studies of the federal judiciary have emphasized the effect of presidential preferences on district court decision outcomes, particularly if one equates presidential preference with political party ideology. Examining federal district court decisions from 1933 to 1977, one study found that “to an impressive degree the voting patterns of the district judges reflect the political values of their appointing president” (Stidham et al. 1984; see also Carp & Rowland 1983 for a similar conclusion). A follow-up study found the trends in the decisional patterns of Democratic versus Republican appointees continued through 1988. Judges appointed by Democratic presidents were 1.42 times more likely to render liberal decisions than were judges appointed by Republicans. These decisional differences were most pronounced in civil rights cases (Rowland & Carp 1996).

A similar study of presidential preferences focused on voting patterns by federal district court judges appointed by Carter and Reagan (Stidham & Carp 1987). Examining cases involving disadvantaged minorities and civil rights and liberties, they found “a clear policy link between the values of the Reagan voters, the president’s judicial nominations, and the subsequent policy decisions of the Reagan cohort” (Stidham & Carp 1987:403). Similarly, an analysis of recent cases continued to find evidence of

presidential preferences in the voting of district and appeals court judges appointed by presidents from Nixon to Clinton. While party differences were distinct, there were also intraparty differences, with Clinton judges developing more moderate records than Carter judges and Reagan judges having more conservative records than judges appointed by other Republican presidents (Stidham et al. 1996).

A number of studies have also discovered regional variations in the decisions of district judges. While the precise cause of these regional variations has not been definitively determined, the findings are consistent with an interpretation based on the influence of home state senators and other home state elites in the selection process. Studies of the federal district courts have found southern judges to be more conservative on issues such as race relations (Peltason 1955; Vines 1964; Giles & Walker 1975), abortion (Alumbaugh & Rowland 1990), and environmental protection (Wenner & Dutter 1988). Regional differences occurring within political parties were examined for the period 1933–1988 (Rowland & Carp 1996). Overall, northern Democrats were most liberal, followed by southern Democrats, northern Republicans, and southern Republicans, respectively.

### **Analytical Focus of This Study**

To date, there has been no systematic study of the extent to which home state senators of the president's party succeed in securing the selection of judges who share and later implement their policy preferences. In part, this lack is due to the unavailability of adequate data on judicial decision making and the necessity to employ relatively crude measures of judicial and senatorial preferences.

While there are still few analyses of decision making on the federal district courts, the few empirical studies that exist (especially those by Carp, Rowland, and Stidham) have provided strong evidence of the impact of the party of the appointing president and of the region of the judge. But these studies are limited in important respects. First, in virtually all analyses of district decision making the measures used to assess the policy preferences of appointing presidents and home state elite have been crude. Most frequently, the policy preferences of the appointing president have been based solely on the party of the appointing president. While there is little doubt that the policy preferences of Democratic and Republican presidents differ consistently and significantly, such a crude measure makes it impossible to distinguish among the preferences of same-party presidents. Moreover, the home state senators thought to be at least as influential as, if not more than, the president in the appointment process share, by definition, the party of the appointing president. Thus,

a measure of the party of the appointing president makes it impossible to distinguish the contribution of presidents from that of the senators they consult for the preferences of the judges selected. A second measurement problem concerns the frequent use of region as a surrogate for the preferences of home state elites involved in the selection of district judges. Such a measure is unable to pick up changes over time in the relative liberalism of a particular state and makes it impossible to compare the effects of elites from states within a region who sometimes have substantially different preferences.

This study contributes to an understanding of the relative importance of presidential versus home state influences on district court decision making by reexamining these familiar questions with a more extensive set of data on judge decisions and with the benefit of several more-refined measures of presidential and senatorial preferences. Specifically, we examine judicial decisions in the universe of published district court decisions in the areas of criminal procedure, civil rights and liberties, and economic regulation over a 35-year period (1961–1995). Instead of relying on a simple dichotomous measure of presidential party as an indicator of presidential preferences and on nominal measures of region to estimate home state influences, we employed more refined measures developed from the Poole and Rosenthal NOMINATE scores of congressional voting.

Our dependent variable is the percentage of career liberal outcomes in the published decisions of each district judge serving during the time period studied. To define the ideology of judges' votes we followed the conventional definitions of "liberal" and "conservative" used in empirical analyses of lower federal courts. Specifically, we adopted the definitions employed by Carp and Rowland (1983). Carp and Rowland categorize as liberal those decisions that support the government in a challenge to regulation of the economy, that favor unions in conflicts with management, that support greater protection for the environment or consumers in environmental and consumer protection litigation, that support the criminal defendant in criminal cases, and that support a person claiming a violation of constitutionally protected rights in a civil rights or liberties case.

The data come from the Carp district court database and include all cases published in the *Federal Supplement* in each of 26 specific case categories from 1961 to 1995. While the *Federal Supplement* may not contain all discretionary policy decisions, the best evidence suggests that "the vast majority of published opinions are explications of discretionary policy decisions that directly or indirectly allocate value beyond the litigants of record." (Rowland & Carp 1996:19)

While several alternate measures of the ideology of the appointing president exist, there is no consensus in the field as to

the superiority of any one measure (Songer & Humphries 2000). We chose the Presidential W-NOMINATE scores (see Poole & Rosenthal 1997 and the authors' web site, <http://voteview.uh.edu>). These scale scores are based on an analysis of all nonconsensual votes in Congress on which the president took a public position.<sup>2</sup> The data were downloaded from the authors' web page.

Presidential NOMINATE scores generated by Poole and Rosenthal (1997) were created similarly to the NOMINATE scores for the members of Congress (see procedure outlined in the following paragraphs). The only difference between the presidential and the congressional scores is that the presidential scores are scaled using the Congressional Quarterly President Support Roll Calls. Still, we treat the presidential scores like those of any member of Congress when fitting them into the model.

The variables used to tap the concept of senatorial preferences were the NOMINATE scores of home state senators. Unlike the ADA scores, the NOMINATE scores created by Poole and Rosenthal (1997) use all nonunanimous roll call votes, rather than a subset of votes. The NOMINATE scores are generated by taking the data matrix of roll call votes and estimating legislator ideal points and roll call outcomes that maximize the joint probability of the observed votes. Specifically, we used the W-NOMINATE scores, rather than the original D-NOMINATE scores. The primary reason we chose the W-NOMINATE scores over the D-NOMINATE scores is that they include scores for the presidents. The W-NOMINATE scores are static versions of the D-NOMINATE scores that use a different deterministic utility function and a static algorithm that constrains the legislators and roll call midpoints to lie within an  $s$ -dimensional hypersphere of radius one, unlike the more flexible constraint structure in the dynamic model that generates the D-NOMINATE score. Separate scores were constructed for senators of the president's party and opposition party senators. If both home state senators were from the same party, the mean of the senators' scores was calculated.

The W-NOMINATE scores were transformed by multiplying all scores by minus one so that liberal records would have positive scores and conservative records would have negative scores.<sup>3</sup> Thus transformed, the measure of presidential liberalism has a range from 0.524 to  $-0.479$ , with a mean of 0.057 and a standard deviation of 0.414. The measures of senatorial liberalism have a

---

<sup>2</sup> The correlation between the W-Nominate scores and the other leading indicators of presidential ideology, including the Tate and Handberg (1991) measure of presidential liberalism; the Segal et al. (1996) measures of presidential economic and social liberalism; and the presidential inflation-adjusted ADA score is above 0.8.

<sup>3</sup> This approach was chosen simply to avoid confusion. In our measures of the dependent variable, positive scores also denote liberal results.

range from 0.952 to  $-0.995$ , with a mean of 0.096 and a standard deviation of 0.518.

Unfortunately, when these measures of the liberalism of both presidents and home state senators of the president's party are used within the same model, there is a potential problem of multicollinearity.<sup>4</sup> This problem results from the fact that presidents often support the same policy position as the position supported by the majority of the members of their party's Senate delegation. In fact, the presidential W-NOMINATE score is very similar to the mean W-NOMINATE score of their party's delegation.<sup>5</sup> Since this correlation exists in the real world and is not a function of the measurement of the variables, *per se*, we cannot parcel out the independent effects each variable has on the dependent variable. In this particular situation, the collinearity may result in a conservative estimate of the impact of the home state senator because the measure is likely to be highly correlated with the president. A common approach to dealing with this type of multicollinearity is to respecify the model in a way that reduces collinearity. Thus, we need to reconceptualize the senatorial measure to adequately capture the senator's individual influence. That is, we want a measure of the liberalism of each individual home state senator that is independent of the common liberalism of the president and his party delegation in the Senate. We attempted to factor out as much of the common variance as possible by taking the difference in the score of each home state senator and the mean score of his or her party's delegation in the Senate. This difference measure is essentially independent of the liberalism of the appointing president.<sup>6</sup> If this measure is positively and significantly associated with the measures of judge liberalism, the relationship will suggest that senatorial preferences have an effect that is independent of general party orientations shared by presidents and senators of their parties.

When there are no home state senators of the president's party, the literature on judicial selection suggests that the president will consult with elites from his party in the home state rather than rely primarily on the recommendations of the opposition party senators. To estimate the preferences of these home state actors, we employ the measure of state elite ideology developed by Berry and associates (Berry et al. 1998).<sup>7</sup> This measure is a continuous variable that reflects the changing ideology of each

---

<sup>4</sup> Specifically, the correlation between the two measures is  $r = 0.527$ ,  $p < .001$ .

<sup>5</sup> For the years covered in our data, the correlation is  $r = 0.964$ ,  $p < .001$ .

<sup>6</sup> The correlation is  $r = -0.09$ .

<sup>7</sup> Berry and associates also created a closely related measure of citizen ideology for each state. This measure is highly correlated with the measure of elite ideology ( $r = 0.69$  in our data) and thus could not be used in the same model as elite ideology. When citizen ideology is used in place of elite ideology in the models, there are no substantive differences in the results.



state from 1960 to 1995 and is derived from an analysis of the ADA scores of the state congressional delegation in conjunction with the proportion of state officeholders who are Democrats. The following analysis utilizes the updated version of elite ideology that was obtained from Professor Berry.<sup>8</sup>

Since our dependent variable, career judicial liberalism, is a continuous variable, we employ ordinary least squares to estimate our model. The dependent variable is weighted for the number of decisions utilized to calculate the career score.<sup>9</sup> Separate models are run for criminal decisions, civil rights and liberties decisions, economic and labor decisions, and a combined category that includes all decisions in each of the preceding issue areas. In addition, separate models are run for judges who were appointed from states that had at least one senator of the president's party at the time of selection and for judges appointed from states without such a senator. If there are two home state senators of the president's party, their scores are averaged.

## Findings

We first examined the analysis for the combined case categories. The results are displayed in Table 1. As noted previously, after running an initial model using the raw NOMINATE score of the home state senator of the president's party, we uncovered problems of multicollinearity. Thus, the models in all the following tables use the alternative measure of the difference between the NOMINATE score of the home state senator and the mean score of the senator's party delegation in the Senate.<sup>10</sup>

Overall, it appears that presidential preferences have a greater effect on federal district court decision making than do senatorial preferences. While the model explains only a modest degree of the variation in judges' career liberalism scores, the results are significant at the .0001 level. The modest overall performance of the model presumably reflects the constrained nature of the choices confronted by district judges. Our results in

---

<sup>8</sup> The main alternative to the Berry score is simply a measure of region that does not distinguish between elites of different parties and fails to distinguish between elites and the mass public, or among elites at different points in time. Another alternative might be to use the score of all members of the House delegation of the president's party. However, its use would result in a loss of data because some states will have no House member of the president's party. Furthermore, there is no indication in the literature on judicial selection that the president typically consults with the members of the House delegation. When there is no home state senator of the president's party, the process seems to vary considerably from one nomination to another. The president sometimes consults with all members of his party's House delegation from the state, sometimes with a particular House member who is close to the president, sometimes with elected state officials of his party, or sometimes with party, faction, or interest group leaders or campaign workers within the home state.

<sup>9</sup> We also ran each model with unweighted scores, limiting analysis to judges who decided a minimum of ten cases. There were no substantive differences in the findings.

<sup>10</sup> The results of this initial analysis are presented in Appendix 1.

**Table 1.** OLS Regression Model of Influences on District Judge Career Scores for All Cases Combined

	Home State Senator of President's Party		Opposition Party Senator Only	
	Regression Coefficient	Standard Error	Regression Coefficient	Standard Error
Intercept	0.419	0.005	0.469	0.023
Presidential ideology	0.124 <sup>a</sup>	0.012	0.156 <sup>a</sup>	0.024
Home senator ideology	0.019 <sup>b</sup>	0.011		
State elite ideology			-0.001	0.001
<i>R</i> squared	0.110		0.150	
<sup>a</sup> <i>p</i> < .001	<i>F</i> = 55.53, <i>p</i> < .0001		<i>F</i> = 22.98, <i>p</i> < .0001	
<sup>b</sup> <i>p</i> < .05	<i>N</i> of judges = 897		<i>N</i> of judges = 262	
	<i>N</i> of appointing presidents = 9		<i>N</i> of appointing presidents = 9	

this respect are consistent with prior findings on the modest but significant impact of region and presidential preferences found in earlier studies of district court decisions.

When comparing presidential preferences with home state influence where there is a home state senator of the president's party, the results are somewhat surprising. We had expected to find that the practice of senatorial courtesy might lead to judicial appointments consistent with the views of home state senators. Both presidential and home state senatorial policy preferences are related to judicial voting records to a statistically significant extent. However, the data in Table 1 show that overall, presidential preference is more than twice as influential as home state senatorial preferences.<sup>11</sup>

In states with no home state senator, presidents presumably consult with some elite of their own party from the state of nomination before announcing their nomination. Therefore, the values of the nominee may reflect home state values from these states as well. In addition, the president's choice may be constrained by the similarity of values exhibited by the majority of those in the pool of available candidates from a given state (see Harris 1953; Goldman 1997; Rowland & Carp 1996). However, given the variety of elite consulted, it is impossible to devise a single measure of the values of the elite consulted without detailed studies of each judge's selection. The measure of state values utilized in our analyses of nominations from states without a home state senator of the president's party is the elite ideology measure developed by Berry and associates (1998). While these

<sup>11</sup> An alternative to examining the impact separately for nominations with and without a home state senator of the president's party is to adopt the convention used by Giles et al. (2001) and score the difference between the position of the home state senator and the president as "zero" when both the senators from the judge's home state are of the opposition party to the president. When we used this alternative (analysis not shown), the results were substantially the same as those in Tables 1–4. Specifically, as expected the coefficients for the effect of presidential policy preferences were intermediate between those in our tables for the presidential preferences with the presence of a senator of his party and those with only opposition senators.

measures provide only a rough approximation of the values of state elite who may have been consulted, they appear to hold the potential of providing a more nuanced measure than the alternative that has been most frequently used (i.e., region).<sup>12</sup> The results in Table 1 show that there is essentially no relationship between this measure of state political preferences and the votes of district court judges. However, the impact of presidential preferences on judicial voting record in these states is even greater than those observed in states with a home state senator of the president's party.

**Table 2.** OLS Regression Model of Influences on District Judge Career Scores for Civil Liberties Cases

	Home State Senator of President's Party		Opposition Party Senator Only	
	Regression Coefficient	Standard Error	Regression Coefficient	Standard Error
Intercept	0.425	0.007	0.475	0.033
Presidential ideology	0.188 <sup>a</sup>	0.016	0.240 <sup>a</sup>	0.034
Home senator ideology	0.054 <sup>a</sup>	0.015		
State elite ideology			-0.001	0.001
<i>R</i> squared	0.151		0.178	
<sup>a</sup> <i>p</i> < .001;	<i>F</i> = 74.53, <i>p</i> < .0001		<i>F</i> = 26.00, <i>p</i> < .0001	
	<i>N</i> of judges = 838		242	
	<i>N</i> of appointing presidents = 9		9	

Table 2 shows our findings for civil liberties cases. Here, the effects of the values of both the president and the home state senators of the president's party on judicial voting were stronger than in the overall model discussed previously. The data in Table 2 thus suggest that in the highly salient area of civil rights and liberties, the appointment of district court judges reflects the mutual influence of both actors. However, while the differences in the effects of presidential preference and senatorial preference were not as pronounced as in the overall model, presidential preference was found again to be more closely related to decision outcomes than was senatorial preference. In states with no home state senator, the results for civil liberties cases were as expected. The relationship between presidential preference and judicial voting records was stronger than the relationship in states in which the president was forced to negotiate with a senator from his own party. Moreover, the relationship between the values of state elite and judicial voting was tiny and not statistically significant.

<sup>12</sup> While the Berry measure is not based just on elites of the president's party, in states with a home state senator of the president's party the Berry measure is highly correlated with the NOMINATE score of that senator ( $r = 0.6$ ). We also utilized the Berry citizen ideology measure in each of the models. Since there were no substantive differences when this variable was used, the results have not been presented for the sake of parsimony.

**Table 3.** OLS Regression Model of Influences on District Judge Career Scores for Economic and Labor Cases

	Home State Senator of President's Party		Opposition Party Senator Only	
	Regression Coefficient	Standard Error	Regression Coefficient	Standard Error
Intercept	0.555	0.006	0.547	0.025
Presidential ideology	0.138 <sup>a</sup>	0.014	0.167 <sup>a</sup>	0.025
Home senator ideology	0.017 <sup>b</sup>	0.013		
State elite ideology			-0.0004	0.0004
<i>R</i> squared	0.103		0.161	
<sup>a</sup> <i>p</i> < .001	<i>F</i> = 47.93, <i>p</i> < .0001		<i>F</i> = 23.25, <i>p</i> < .0001	
	N of judges = 833		245	
	N of appointing presidents = 9		9	

Table 3 shows our findings for economic and labor cases. Presidential preference is again significantly related to the career liberalism of a president's judicial appointees in this area, though the strength of the relationship is marginally lower than in civil liberties cases. In contrast, the relationship between the preferences of home state senators of the president's party and judge liberalism was only marginally significant. The results in states with no senator of the president's party were as expected. The relationship between presidential preference and judicial liberalism was significant and more strongly related to outcomes than in nominations with a home state senator of the president's party, but state elite ideology had virtually no bearing.

**Table 4.** OLS Regression Model of Influences on District Judge Career Scores for Criminal Cases

	Home State Senator of President's Party		Opposition Party Senator Only	
	Regression Coefficient	Standard Error	Regression Coefficient	Standard Error
Intercept	0.281	0.007	0.356	0.038
Presidential ideology	0.068 <sup>a</sup>	0.017	0.093 <sup>b</sup>	0.039
Home senator ideology	-0.007	0.016		
State elite ideology			-0.0005	0.0007
<i>R</i> squared	0.023		0.029	
<sup>a</sup> <i>p</i> < .001	<i>F</i> = 9.00, <i>p</i> < .001		<i>F</i> = 3.13, <i>p</i> < .05	
<sup>b</sup> <i>p</i> < .01	N of judges = 766		214	
	N of appointing presidents = 9		9	

Table 4 shows our findings for criminal cases. Here, the relationship between presidential preference and judicial voting is weak, though still statistically significant. However, there is essentially no relationship between the liberalism of the home state senators of the president's party and the career voting records of district judges. Again, where there is no home state senator of the president's party, the relationship between presidential preference and judicial voting is stronger, though still weak compared to the relationships discovered in other issue areas. Essen-

tially no relationship is evident between state elite ideology and judicial voting.

A consistent pattern in all four models that we have examined is that presidential preferences appear to be more strongly related to the voting records of the judges they appoint in states with no home state senators of the president's party than in states in which at least one senator is of the same party. To test this relationship more systematically, we created a new model that retained the measure of presidential preferences and added a dummy variable that simply took the value "one" when there was a senator of the president's party and "zero" when both senators were of the opposition party. Then a multiplicative term was created to assess the interaction of the presence of such a senator and the effects of presidential preferences. The results are displayed in Table 5.

**Table 5.** OLS Regression Model of Influences on District Judge Career with Interaction Term for Presence of Home State Senator of President's Party

	All Cases	Civil Liberties	Economic	Criminal
Intercept	0.454 (0.008)	0.450 (0.011)	0.548 (0.009)	0.333 (0.013)
Presidential ideology	0.172 <sup>a</sup> (0.021)	0.238 <sup>a</sup> (0.028)	0.186 <sup>a</sup> (0.022)	0.102 <sup>b</sup> (0.033)
Home state senator × Presidential ideology	-0.050 <sup>c</sup> (0.023)	-0.055 <sup>c</sup> (0.032)	-0.050 <sup>c</sup> (0.026)	-0.033 (0.036)
Presence of home state senator	-0.032 (0.009)	-0.019 (0.013)	0.009 (0.011)	-0.053 (0.015)
<i>R</i> squared	0.129	0.151	0.129	0.036
<i>F</i>	61.28 <sup>a</sup>	68.03 <sup>a</sup>	56.46 <sup>a</sup>	13.03 <sup>a</sup>
<i>N</i> of judges	1,236	1,148	1,149	1,044

<sup>a</sup>*p* < .001

<sup>b</sup>*p* < .01

<sup>c</sup>*p* < .05

*N* of appointing presidents = 9

The results in Table 5 confirm the inference from the previous tables that presidential values are more strongly related to the voting of their judges in states without a home state senator of the president's party. As in the previous models, all the coefficients for presidential ideology remain positive and statistically significant (indicating the strong relationship in states without a senator of the president's party). However, in all four models the relationship of the multiplicative term to judicial voting is negative, and in all but criminal cases the relationship is statistically significant. These results suggest that presidential influence is significantly reduced in states in which the president must bargain with a senator from his own party.

## Variation Across Presidents

The main analysis presented here has examined the overall significance of the policy preferences of appointing presidents and the home state senators of their parties for the subsequent decision making of district judges. The final portion of our analysis briefly examines whether these relationships vary across time or for different presidents. To provide an overview of such variation, we focus on civil liberties decisions: the policy area in which the preferences of both senators and presidents appear to matter most.

**Table 6.** Regression Coefficients from Simple OLS Models for Each Appointing President of the Relationship Between the Policy Preferences of Home State Senators of the President's Party and District Judge Career Scores for Civil Liberties Cases

President	Policy Position of Home State Senator of President's Party		N of Judges
	Regression Coefficient	Standard Error	
Eisenhower	0.188	0.176	16
Kennedy	0.148 <sup>c</sup>	0.071	73
Johnson	0.079 <sup>c</sup>	0.037	88
Nixon	0.003	0.027	130
Ford	0.138 <sup>b</sup>	0.039	34
Carter	0.062 <sup>c</sup>	0.048	164
Reagan	0.032	0.041	186
Bush	0.058	0.100	84
Clinton	0.235	0.236	50

<sup>a</sup> $p < .05$

<sup>b</sup> $p < .01$

<sup>c</sup> $p < .10$

To provide an initial overview of variation over time, we ran a series of very simple OLS regression models of judicial voting with judge career scores as the dependent variable and the policy preferences of senators as the single independent variable. To simplify the presentation of these nine models, we present in Table 6 a summary that contains only the regression coefficient for the independent variable from each of the models along with its standard error and the number of judges appointed by each president whose career score is included in the model. While there is considerable variation across presidencies, there is no apparent trend over time.

While senatorial impact does not appear to be either increasing or decreasing over time and does not appear to be related to the party of the president, a cursory examination of the results in Table 6 suggests that the extent to which each president employed policy rather than partisan or mixed appointment goals in his approach to judicial selection may account for at least part of the variation. As noted earlier, Goldman (1997) conducted an

**Table 7.** OLS Regression Model of Influences on District Judge Career Scores for Civil Liberties Cases, Controlling for Policy Versus Partisan Orientation of Appointing President

	Home State Senator of President's Party	
	Regression Coefficient	Standard Error
Intercept	0.410	0.013
Presidential ideology	0.137 <sup>a</sup>	0.029
Presidential ideology × Policy orientation	0.163 <sup>a</sup>	0.037
Home senator ideology	0.106 <sup>a</sup>	0.026
Senator ideology × Policy orientation	-0.069 <sup>b</sup>	0.032
Policy orientation of appointing president	0.054 <sup>c</sup>	0.016

$r^2 = 0.207$ ,  $F = 43.29$ ,  $p < .0001$

$N$  of judges = 834

<sup>a</sup> $p < .001$

$N$  of appointing presidents = 9

<sup>b</sup> $p < .01$

<sup>c</sup> $p < .05$

extensive examination of the presidential nominating process that involved a study of presidential papers, interviews with key actors in the selection process, and examination of the records of the Senate Judiciary Committee. Based on this examination, Goldman classified the extent to which each president appeared to pursue policy versus partisan/patronage goals in the selection of his judicial nominees. Using this analysis of Goldman, we created a new variable that takes the value "one" when the president's goals were primarily policy or ideological and "zero" when other goals predominated. Multiplicative terms were then created between this appointment orientation and the preferences of presidents and senators to determine whether there were significant interaction effects between the president's goals and the relative impact of presidential and senatorial preferences. The results are presented in Table 7.

The results suggest that presidential goals in the appointment process have a substantial effect on the extent to which judicial behavior is consistent with the policy preferences of both presidents and senators. Even for presidents who primarily pursued goals other than policy, there is a statistically significant relationship between the policy goals of presidents and the voting of the judges they appointed. However, the impact of presidential preferences is increased substantially and the impact of senatorial preferences is decreased when presidents consciously pursue policy objectives in their appointment strategy.

## Discussion

In all case categories, presidential preference was significantly related to the career liberalism of the president's district court appointees. Moreover, in all four comparisons, the strength of the relationship between presidential preferences

and judicial outcomes was more than twice as great as the relationship between senatorial preferences and career judicial scores, even in states with at least one senator of the president's party. In states with no home state senator of the president's party, presidential influence appeared to be even greater, and the impact of other state elites was negligible.

The literature on the selection of district court judges suggests that home state senators of the president's party have at least as much influence on the choice of most nominees as the president. As noted previously, some studies even insist that home state senators are the dominant players in the judicial selection game. Thus, at least in states where home state senators had considerable influence on the nomination process through senatorial courtesy, we had expected to find senatorial preference to be as important as if not more important than presidential preference in the explanation of judicial liberalism. However, our findings show that senatorial courtesy does not have as great a bearing on judicial outcomes at the district court level as do presidential preferences. How can we account for this result?

Rowland and Carp (1996:63) indicated a decline in partisan differences across regions since the late 1970s. This decline in federal district court regional differences could be the result of declining home state senatorial preference influence. Rowland and Carp also point out that "since the 1970s there has been a nationalization of appointment criteria for federal district judges and a concomitant decrease in the impact of sectional influence in their selection and subsequent voting patterns" (85). This trend also could account for a greater influence by presidential preference than by home state preferences. Relatedly, senatorial influence may have decreased after the use by senators of "merit" commissions to recommend candidates became more common after 1978. However, when we reran the analysis separately for the pre-1978 and post-1977 periods, senatorial influence was not significantly greater in the earlier period.

Alternatively, senators on average may be much less concerned than presidents with the political ideology of "their" judicial nominees. The criteria used by senators when negotiating with presidents over judicial nominations have not been subjected to much empirical examination. Studies of the confirmation process for Supreme Court justices indicate that senators as well as presidents are concerned with the policy views of the nominees. Thus, it might be assumed that in the lower courts senators would also share the policy concerns of presidents. But we have little hard evidence that this assumption is valid. The most ambitious analysis of the role of home state senators found that there was substantial variation among Reagan-era Republican home state senators in the importance they attached to the policy views of the nominees (Rowland & Carp 1996). Thus, the



absence of any strong effect of senatorial preferences on the judicial liberalism of district judges may reflect a relatively low average concern among home state senators with judges' policy views. Instead, we speculate that most senators may be more concerned with factors such as legal competence, personal friendship and political loyalty, and the impact of the appointments on partisan factions within the state than on the policy preferences of the nominee. But until the Rowland and Carp (1996) study is supplemented by studies of senators from other states in other administrations, such ideas remain little more than speculative hypotheses.

While much of the judicial selection literature places heavy emphasis on the effects of senatorial courtesy in the recruitment process, our findings suggest that presidential influence is much more substantial in judicial outcomes at the federal district court level than senatorial influences. Whether this difference is due to a greater concern with policy on the part of presidents or to a more substantial presidential ability to influence the actual choice of nominees than has been previously believed remains for future research. Nevertheless, our results suggest that when the norms of senatorial courtesy compel presidents to negotiate with home state senators of their party, they are somewhat constrained and as a result must content themselves with judges who will less systematically implement the president's policy preferences on the bench.

## References

- Alumbaugh, Steve, & C. K. Rowland (1990) "The Links Between Platform-Based Appointment Criteria and Trial Judges' Abortion Judgments," 74 *Judicature* 153–62.
- Berry, William D., Evan J. Ringquist, Richard C. Fording, & Russell L. Hanson (1998) "Measuring Citizen and Government Ideology in the American States, 1960–93," 42 *American J. of Political Science* 327–48.
- Carp, Robert A., & C. K. Rowland (1983) *Policymaking and Politics in the Federal District Courts*. Knoxville: Univ. of Tennessee Press.
- Carp, Robert A., & Ronald Stidham (1998) *The Federal Courts*, 3rd ed. Washington, DC: CQ Press.
- Chase, Harold W. (1966) "Federal Judges: The Appointing Process," 51 *Minnesota Law Review* 185.
- Fowler, Gary W. (1983) "A Comparison of Initial Recommendation Procedures: Judicial Selection Under Reagan and Carter." 1 *Yale Law & Policy Review* 299–356.
- Giles, Michael W., & Thomas Walker (1975) "Judicial Policy Making and Southern School Segregation," 37 *Journal of Politics* 917–37.
- Giles, Michael W., Virginia A. Hettinger, & Todd Peppers (2001) "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas," 54 *Political Research Quarterly* 623–42.
- Goldman, Sheldon (1997) *Picking Federal Judges: Lower Court Selection from Roosevelt Through Reagan*. New Haven: Yale Univ. Press.
- Goulden, Joseph C. (1974). *The Benchwarmers: The Private World of the Powerful Federal Judges*. New York: Ballantine Books.

- Grossman, Joel B. (1965) *Lawyers and Judges: The ABA and the Politics of Judicial Selection*. New York: John Wiley & Sons, Inc.
- Harris, Joseph P. (1953) *The Advice and Consent of the Senate*. Berkeley: Univ. of California Press.
- Haynes, Evans (1944) *Selection and Tenure of Judges*. Newark: National Conference of Judicial Councils.
- McFeeley, Neil D. (1987). *Appointment of Judges: The Johnson Presidency*. Austin: Univ. of Texas Press.
- Peltason, Jack W. (1955) *Federal Courts in the Political Process*. New York: Random House.
- Poole, Keith T., & Howard Rosenthal (1997) *Congress: A Political Economic History of Roll Call Voting*. New York: Oxford University Press.
- Richardson, Richard J., and Kenneth N. Vines (1970) *The Politics of Federal Courts*. Boston: Little, Brown.
- Rowland, C. K., & Robert A. Carp (1983) "Presidential Effects on Federal District Court Policy Decisions: Economic Liberalism, 1960–77," 64 *Social Science Quarterly* 386–92.
- (1996) *Politics and Judgment in the Federal District Courts*. Lawrence: Univ. Press of Kansas.
- Segal, Jeffrey A., Robert Howard, & Christopher Hutz (1996) "Presidential Success in Supreme Court Nominations: Testing a Constrained Presidency Model." Paper presented at the annual meeting of the Midwest Political Science Association, Chicago.
- Slotnick, Elliot (1984) "Judicial Selection Systems and Nomination Outcomes: Does the Process Make a Difference?" 12 *American Politics Quarterly* 225–40.
- Songer, Donald R., & Martha Anne Humphries (2000) "Assessing the Impact of Presidential and Home State Influences on Judicial Decision Making in the U.S. Courts of Appeals: New Evidence from Refined Measurements." Paper presented at the Annual Meeting of the Midwest Political Science Association, Chicago.
- Stidham, Ronald, & Robert A. Carp (1987) "Judges, Presidents and Policy Choices: Exploring the Linkage," 68 *Social Sciences Quarterly* 395–404.
- Stidham, Ronald, Robert A. Carp, & C. K. Rowland (1984) "Patterns of Presidential Influence on the Federal District Courts: An Analysis of the Appointment Process," 14 *Presidential Studies Quarterly* 548–60.
- Stidham, Ronald, Robert A. Carp, & Donald R. Songer (1996) "The Voting Behavior of President Clinton's Judicial Appointees," 80 *Judicature* 16–20.
- Tate, Neal C., & Roger Handberg (1991) "Time Binding and Theory Building in Personal Attribute Models of Supreme Court Voting Behavior, 1916–88," 35 *American J. of Political Science* 460–80.
- Vines, Kenneth (1964) "Federal District Judges and Race Relations Cases in the South," 26 *J. of Politics* 337–57.
- Wenner, Lettie M., & Lee E. Dutter (1988) "Contextual Influences on Judicial Decision Making," 41 *Western Political Quarterly* 115–34.

**Appendix 1.** OLS Regression Model of Influences on District Judge Career Scores for All Cases Combined Using Alternative Measure of Home State Senatorial Values<sup>a</sup>

	Regression Coefficient	Standard Error
Intercept	0.419	0.005
Presidential ideology	0.100 <sup>b</sup>	0.014
Home senator ideology	0.034 <sup>c</sup>	0.011
<i>R</i> squared	0.117	

$F = 59.27, p < .0001$

$N$  of judges = 897

$N$  of appointing presidents = 9

<sup>a</sup>Alternative model using home state senator NOMINATE score rather than difference score reported in Table 1

<sup>b</sup> $p = .001$

<sup>c</sup> $p = .01$