

# CAREER STAGE AND DECISION MAKING ON THE SEVENTH CIRCUIT: A COMPARATIVE ANALYSIS

Erin B. Kaheny,\* Sara C. Benesh,\*\* and Susan B. Haire\*\*\*

## INTRODUCTION

Increased attention to the nomination and confirmation of judges to the U.S. Courts of Appeals<sup>1</sup> underscores the policy importance of decisions made at this level of the federal judicial hierarchy, particularly given the unlikely prospect of Supreme Court review.<sup>2</sup> The legitimacy of these courts and acceptance of their decisions may depend on the perception that judges follow principles of formal justice and practice consistency in their decision making by treating like cases alike.<sup>3</sup> Existing empirical research on the subject suggests that circuit judge decisions are responsive to multiple types of influences.<sup>4</sup> Of special interest to legal scholars, however, has been the

---

\* Assistant Professor of Political Science, Department of Political Science, University of Wisconsin–Milwaukee, Ph.D., University of South Carolina, 2004.

\*\* Associate Professor of Political Science, Department of Political Science, University of Wisconsin–Milwaukee, Ph.D., Michigan State University, 1999.

\*\*\* Associate Professor of Political Science, School of Public and International Affairs, University of Georgia, Ph.D., University of South Carolina, 1993. Professor Haire is currently on leave from the University, serving at the National Science Foundation. She acknowledges support by the Foundation to conduct this research. Any opinions, findings, and conclusions or recommendations expressed in this article are those of the authors and do not necessarily reflect the views of the National Science Foundation.

1. NANCY SCHERER, SCORING POINTS: POLITICIANS, ACTIVISTS, AND THE LOWER FEDERAL COURT APPOINTMENT PROCESS (2005).

2. DONALD R. SONGER, REGINALD S. SHEEHAN & SUSAN HAIRE, CONTINUITY AND CHANGE ON THE U.S. COURTS OF APPEALS 16 (2000).

3. J.L.M Gribnau, *Legitimacy of the Judiciary*, 64 ELECTRONIC J. COMP. L. (December 2002), available online at <http://www.ejcl.org/64/art64-3.html>.

4. A few notable studies illustrating the importance of judicial ideology in circuit judge decision making include Sheldon Goldman, *Voting Behavior on the United States Courts of Appeals Revisited*, 69 AM. POL. SCI. REV. 491(1975) and Micheal W. Giles, Virginia A. Hettinger & Todd Peppers, *Picking Federal Judges: A Note on Policy and Partisan Selection Agendas*, 54 POL. RES. Q. 623 (2001). In addition, a number of other studies indicate the importance of legal policy in the context of these judge decisions. See, for example, Martha Anne Humphries & Donald R. Songer, *Law and Politics in Judicial Oversight of Federal Administrative Agencies*, 61 J. POL. 207 (1999) and Donald R. Songer, Martha Humphries Ginn & Tammy A. Sarver, *Do Judges Follow the Law When There Is No Fear of Reversal?*, 24 JUST. SYS. J. 137 (2003). Along with ideological and legal motivations, circuit court scholars have also highlighted the role of institutional features in their analyses of circuit judge behavior. On this point, see for example, Burton Atkins, *Decision-making Rules and Judicial Strategy on the United States Courts of Appeals*, 25 W. POL. Q. 626 (1972); Frank Cross & Emerson Tiller, *Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal*

apparent connection between the appointment process, in which circuit judges are selected, at least in part, for their perceived policy preferences and subsequent judge voting behavior.<sup>5</sup> The role of policy preferences may be expected to vary over the course of a judicial career, however. The case of Supreme Court Justice Harry Blackmun is perhaps the best known instance of such a shift, and recent research suggests that his case is not unusual, as most justices serving since 1937 have become more liberal or conservative over time.<sup>6</sup> Moreover, such shifts are not limited to the U.S. Supreme Court. Scholarly accounts chronicle instances where *lower* federal court judges changed their positions on civil rights issues during the 1950s and '60s.<sup>7</sup> These empirical findings argue for additional scholarship that investigates the potential causes of variability in judges' positions, especially over the course of their careers.

In this article, we argue that career effects are relevant to studying judicial decision making on the U.S. Courts of Appeals. To explore differences in voting behavior over the course of a judge's tenure, we compare the percentage of liberal decisions cast by a sample of judges in the Seventh Circuit across early, middle, and late stages of their circuit careers. For comparison, we also present an analysis of voting by judges in the Fourth and Eighth Circuits. In doing so, attention is paid to the extent to which a career-stage analysis can inform the broader discussion of whether circuit judges implement the policy views of their appointing president.

#### DECISIONAL VARIANCE: A CAREER STAGE ANALYSIS

To the extent that judicial scholars have included a "career stage" component in their analyses, they have largely focused on a judge's freshman or initial career stage.<sup>8</sup> These analyses of "freshman" or "acclimation" effects are based on a commonly-held assumption that newly appointed judges must

---

*Courts of Appeals*, 107 YALE L.J. 2155 (1998); Virginia A. Hettinger, Stefanie A. Lindquist & Wendy L. Martinek, *Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals*, 48 AM. J. POL. SCI. 123 (2004).

5. Previous studies find that presidents have successfully appointed circuit judges who reflect their policy preferences. See, for example, Donald R. Songer & Martha Humphries Ginn, *Assessing the Impact of Presidential and Home State Influences on Judicial Decisionmaking in the United States Courts of Appeals*, 55 POL. RES. Q. 299 (2002); Ashlyn Kuersten & Donald R. Songer, *Presidential Success through Appointments to the United States Courts of Appeals*, 31 AM. POL. RES. 107 (2003).
6. See Lee Epstein, Andrew D. Martin, Kevin M. Quinn & Jeffrey A. Segal, *Ideological Drift among Supreme Court Justices: Who, When, and How Important?*, 101 NW. U. L. REV. 1483 (2007).
7. LAWRENCE BAUM, JUDGES AND THEIR AUDIENCES: A PERSPECTIVE ON JUDICIAL BEHAVIOR 92-93 (2006).
8. *But see* Richard S. Higgins & Paul H. Rubin, *Judicial Discretion*, 9 J. LEGAL STUD. 129 (1980).

adjust to their new environs. In turn, their behavior as new judges should reflect an adjustment or transitional period. In tests of whether Supreme Court justices experience a freshman period, scholars have reported mixed results; some justices conform to expectations of a freshman effect with respect to opinion writing and policy-based voting, others do not.<sup>9</sup>

Although much of this research is focused on the freshman effects experienced by Supreme Court justices, scholars suggest that the institutional features of circuit court decision making (e.g., high caseloads, decision making in rotating three-judge panels, and possible review of decisions by the circuit sitting *en banc*) should contribute to an acclimation effect for circuit judges.<sup>10</sup> As noted in one interview-based study of Ninth Circuit judges, the process of acclimating to the role of circuit judge might be more difficult since judges are “dispersed throughout the circuit.”<sup>11</sup>

Understanding the effects of career stage, however, should not be limited to a focus on a period of acclimation. This analysis, therefore, offers a framework that considers other changes over the course of a judge’s entire tenure on the bench. Drawing on vocational studies, which highlight the effects of “career stages,”<sup>12</sup> it is proposed that a judge’s career will be marked by “distinct stages”<sup>13</sup> with corresponding differences in “expectations, attitudes, and goals.”<sup>14</sup> In particular, the focus here is on how the role of policy preferences may be expected to vary with tenure on the bench.

- 
9. See, e.g., Terry Bowen & John M. Scheb, II, *Reassessing the ‘Freshman Effect’: The Voting Bloc Alignment of New Justices on the United States Supreme Court, 1921-1990*, 15 POL. BEHAV. 1 (1993); Saul Brenner & Timothy M. Hagle, *Opinion Writing and Acclimation Effect*, 18 POL. BEHAV. 235 (1996); Edward V. Heck & Melinda Gann Hall, *Bloc Voting and The Freshman Justice Revisited*, 43 J. POL. 852 (1981); Mark S. Hurwitz & Joseph V. Stefko, *Acclimation and Attitudes: “Newcomer” Justices and Precedent Conformance on the Supreme Court*, 57 POL. RES. Q. 121 (2004); Charles R. Shipan, *Acclimation Effects Revisited*, 40 JURIMETRICS J. 243 (2000); Eloise C. Snyder, *The Supreme Court as a Small Group*, 36 SOC. FORCES 232 (1958); Sandra L. Wood, Linda Camp Keith, Drew Noble Lanier & Ayo Ogundele, *‘Acclimation Effects’ for Supreme Court Justices: A Cross-Validation, 1888-1940*, 42 AM. J. POL. SCI. 690 (1998).
  10. Virginia A. Hettinger, Stefanie A. Lindquist & Wendy Martinek, *Acclimation Effects and Separate Opinion Writing in the United States Courts of Appeals*, 84 SOC. SCI. Q. 792, 794-795 (2003).
  11. Stephen L. Wasby, “Into the Soup?:” *The Acclimation of Ninth Circuit Appellate Judges*, 73 JUDICATURE 10, 12 (1989).
  12. See, e.g., Natalie J. Allen & John P. Meyer, *Organizational Commitment: Evidence of Career Stage Effects?*, 26 J. BUS. RES. 49 (1993); Samuel Aryee, Yue Wah Chay & Juniper Chew, *An Investigation of the Predictors and Outcomes of Career Commitment in Three Career Stages*, 44 J. VOC. BEHAV. 1 (1994); Jan Leeman Brooks & Anson Seers, *Predictors of Organizational Commitment: Variations across Career Stages*, 38 J. VOC. BEHAV. 53 (1991); James C. McElroy, Paula C. Morrow & Thomas R. Wardlow, *A Career Stage Analysis of Police Officer Work Commitment*, 27 J. CRIM. JUST. 507 (1999).
  13. McElroy, Morrow and Wardlow, *supra* note 12, 508.
  14. *Id.*

Although there are important differences in the nature of career models put forth by scholars, “three-stage models” are frequently employed,<sup>15</sup> which emphasize individuals’ “needs to get established, to advance, and finally to play out their roles” at the end of their career.<sup>16</sup> Taking these types of studies into account, much can be gained by examining circuit judges who are new to the bench, those who are in the middle-stage of their organizational tenure and, finally, those who are nearing the end of their circuit careers.

With respect to a judge’s initial years on the bench, existing recruitment processes would be expected to result in decisions that align with the policy preferences of the appointing administration. These judges, recently minted through an extremely partisan process,<sup>17</sup> but without the institutional commitment and/or knowledge that only tenure can bring, will more likely vote in accordance with their preferred policy disposition. In other words, judges are conditioned to think (and vote) ideologically by the process by which they obtain their seat. Circuit Judge Carolyn King offers some support for this view, arguing that judges are selected today with reference to the extent to which they can be “relied upon to further the activists’ policy agendas.”<sup>18</sup>

The selection process may be expected to yield candidates with well-formed preferences that match their appointing president’s and, thus, who are more likely to vote in accordance with their preferences. As circuit judges gain experience on the bench, they become socialized into the norms of the circuit and assume an increasing number of administrative responsibilities. To the extent that the process of judicial socialization fuels competing and conflicting values, one would expect to find less predictable policy-based voting. For example, one would expect to see an effect associated with caseload constraints as “overworked” judges develop strategies to maximize leisure time.<sup>19</sup> In doing so, they may be less likely to achieve their ideal policy.<sup>20</sup>

---

15. S. Rabinowitz & D.T. Hall, *Changing Correlates of Job Involvement in Three Career Stages*, 18 J. VOC. BEHAV. 138 (1981) and J. Slocum & W.L. Cron, *Job Attitudes and Performance During Three Career Stages*, 26 J. VOC. BEHAV. 126 (1985) cited in Brooks & Seers, *supra* note 12, 54. Brooks and Seers, however, felt it more appropriate for their research question to employ a five-stage model.

16. Brooks & Seers, *supra* note 12, 54.

17. LEE EPSTEIN & JEFFREY A. SEGAL, *ADVICE AND CONSENT: THE POLITICS OF JUDICIAL APPOINTMENTS* (2005).

18. Judge Carolyn Dineen King, *Challenges to Judicial Independence and the Rule of Law: A Perspective from the Circuit Courts*, Hallows Lecture, Marquette University Law School 15 (February 20, 2007) (transcript available online at <http://law.marquette.edu/s3/site/images/alumni/HallowsLecture2007.pdf>).

19. RICHARD A. POSNER, *OVERCOMING LAW* (1995).

20. BAUM, *supra* note 7.

Informal norms that foster collegiality and the respect of one's colleagues on the circuit, moreover, have been identified as important to judges.<sup>21</sup> One would expect that judges would become more attached to these norms over time. Thus, those judges who are in the early stage of their careers might be more responsive to policy concerns, whereas mid-career circuit judges will become more variable in their decision making, responsive to concerns other than, or in addition to, policy-related ones. In terms of judicial voting behavior, this should be reflected in Democratic appointees registering higher liberal voting scores in their early career stage, and more variable voting records in their middle career stage (i.e., a higher number of conservative votes should have been cast). Similarly, Republican appointees might exhibit a lower liberal voting score during their initial tenure period relative to their middle career stage, with such judges casting liberal votes in a higher percentage of cases in this latter stage.

However, judges in their mid-career stage may behave distinctively from more senior judges in terms of policy-preference-based voting. Since most circuit judges are not promoted to the Supreme Court, the vast majority will spend the remainder of their judicial careers as circuit judges, with many opting to take "senior status," which allow such judges to continue participating in case dispositions without the weight of administrative obligations and heavy caseloads.<sup>22</sup> Consequently, those judges nearing the end of their careers have firmly entrenched policy positions, but they have been thoroughly socialized in the norms of their circuit. Unlike their mid-career colleagues, however, they are in the twilight of their careers with other, more personal, considerations looming on the horizon. Those with the most tenure, therefore, while having firm policy preferences and institutional knowledge, may either begin (again) to vote more consistently in accordance with their policy preferences as they become free of administrative obligations, or they might be more consistently influenced by circuit institutional variables.<sup>23</sup> This, in turn, may affect the consistency with which their policy preferences influence their votes and, hence, the consistency of

---

21. See, e.g., DAVID E. KLEIN, MAKING LAW IN THE U.S. COURTS OF APPEALS (2002) and BAUM, *supra* note 7.

22. Susan Haire, Beyond the Gold Watch: Evaluating the Decision Making of Senior Judges on the U.S. Courts of Appeals (February 2006) (paper presented at Political Science Research Workshop, University of South Carolina, on file with authors).

23. Relatively few judicial studies exist to guide us on this point. Haire describes how certain institutional practices of the circuits may tend to foster a stronger commitment to the organization as the judge accrues more experience. For example, she notes that active judges with longer tenures are more likely to be tapped for additional administrative tasks and/or posts within the circuit. See Haire, *supra* note 22. We also acknowledge the possibility that judicial behavior might be influenced by concerns of a judge's personal legacy. See Higgins & Rubin, *supra* note 8.

their liberal or conservative voting record in their final career stage. Via an analysis of voting behavior by career stage, one can assess whether presidents who utilize circuit appointments as a means of instituting policy change are successful in the long term or whether that success is limited only to those judges in their early career stage. Given the assumption that presidents care deeply about these appointments for exactly the reason of their potential long-term influence on public policy, this is an important question indeed.

#### DATA AND METHODS

The observations used for this analysis were drawn from the widely-employed U.S. Courts of Appeals Database and its corresponding update<sup>24</sup> and included votes cast in the years 1968-2002. Votes in all substantive issue areas except tax, patent, and copyright cases were included in the analysis, as these latter cases do not necessarily have clear liberal or conservative outcomes. Moreover, cases with mixed ideological outcomes are excluded, and the analysis is confined to votes cast by regular appellate court judges on active and senior status. Since the U.S. Courts of Appeals Database samples only decisions accompanied by a published opinion, the results of this analysis should be interpreted with caution, as the observations are limited to appeals court decisions with presumably greater policy content.

Specifically, the percentages of liberal votes cast by judges within their respective circuits in this thirty-five year period are calculated across various career junctures. Including the states of Wisconsin, Illinois, and Indiana, the Seventh Circuit currently has 11 authorized judges.<sup>25</sup> The Fourth and Eighth Circuits are offered as additional appeals courts for comparison in this voting analysis. The Fourth Circuit is included in the analysis to permit comparison with a circuit that is similar to the Seventh in terms of its geographical compactness, but it is not geographically contiguous. The Fourth Circuit includes the states of Virginia, West Virginia, North Carolina, South Carolina, and Maryland and currently has 15 authorized judges.<sup>26</sup> A neighbor to the Seventh Circuit, the Eighth Circuit is larger geographically and includes the

---

24. Donald R. Songer, *The U.S. Courts of Appeals Database (1925-1996)*, available at <http://www.as.uky.edu/polisci/ulmerproject/appctdata.htm> and Ashlyn K. Kuersten & Susan B. Haire, *Update to the Appeals Court Database, (1997-2002)*, available at <http://web.as.uky.edu/polisci/ulmerproject/appctdata.htm>. For the time period of our analysis, both datasets include 30 cases for every circuit-year.

25. Chronological History of Authorized Judgeships in the U.S. Courts of Appeals, <http://www.uscourts.gov/history/chronologicalappeals.html#7>.

26. *Id.*

states of North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Missouri, and Arkansas. The Eighth Circuit currently has 11 authorized judges.<sup>27</sup>

The votes in the appeals court database are coded in terms of the policy content along a liberal-conservative dimension. For example, a vote supporting the position of a litigant claiming a civil rights violation is coded as “liberal,” whereas a vote against that position is coded as “conservative.” In criminal cases, a vote supporting the position of the defendant (or prisoner) is coded as “liberal” whereas a vote against is “conservative.” In labor-economics cases, liberal votes include those in which judges supported the positions taken by unions, the federal government in regulatory cases, and individual plaintiffs in tort cases. Conservative votes include those in which judges supported the positions taken by management (against unions), opposed those taken by the federal government in regulatory cases, and supported corporate defendants in tort and insurance cases filed by individuals.

For those judges sitting on these circuits during this time period, the percentage of liberal votes cast in the early, middle, and late stages of their careers is computed. For the purposes of this analysis, a judge was designated as being in his or her “early career stage” if the judge was on the bench for less than six years at the time of the vote. Circuit votes cast in a judge’s sixth through tenth year on the bench were deemed “middle career stage” votes. Finally, percentage liberal voting scores were computed for judges in their “late career stage,” which was defined as a vote cast after a judge’s tenth year on the bench.<sup>28</sup> Percent liberal scores were only computed for judges who cast at least eight votes in the appeals court sample within each of these career stages. Hence, the career stage scores for each of the judges in the sample are based on a threshold number of votes to increase the reliability of the measures, and all of the judges in the sample served more than ten years total on their respective circuit bench, allowing for comparisons across the three career stages.

As noted above, it is expected that Democratic appointees will exhibit higher percentage liberal voting scores in their earliest career stage relative to their middle and late career stages. Similarly, if Republican appointed judges’ behavior is tempered by institutional constraints as tenure increases, one would expect these judges’ percent liberal voting scores to increase (i.e., their voting would become less consistently conservative) by mid-career. Given

---

27. *Id.*

28. These stages roughly break votes by tenure into thirds; 31% of votes in this sample of judges are cast by judges with less than 6 years tenure; 27% are cast by judges with between 6 and 10 years of tenure; and 41% are cast by judges on the bench for more than 10 years.

that 16 of the 42 judges in the analysis were appointed by President Reagan, attention is paid as to whether this president, known for his desire to appoint those to the bench who shared his conservative views,<sup>29</sup> was largely successful in appointing individuals who consistently, across the stages of their careers, reflected his policy positions. Data on judicial appointments, including presidential appointment data, were drawn from the Multi-User Database on the Attributes of United States Appeals Court Judges,<sup>30</sup> with updated information for appeals court judges drawn from the Federal Judges Biographical Database.<sup>31</sup>

### RESULTS AND DISCUSSION

Table 1 reports the findings of the analysis for the Seventh Circuit judges. First, as seen in the table, there is a notable amount of variation by career stage in many of these judges' voting records. However, with respect to the expectations advanced above, the voting records of these judges provide only partial support. Of the fourteen judges analyzed, half of the voting records revealed signs of moderation (i.e., liberal judges were more likely to vote in a conservative manner, and conservative judges were more likely to vote in a liberal manner) in their mid-career stage relative to their first years on the bench. Two of the three Democratic appointees exhibit the trends expected with voting records that became substantially more conservative after their first six years on the bench, dropping by nearly fifteen points in percentage liberal voting in the mid-career stage.

---

29. For a thorough examination of lower federal court judicial selection, including an analysis of the process under the Reagan Administration, see SHELDON GOLDMAN, PICKING FEDERAL JUDGES: LOWER COURT SELECTION FROM ROOSEVELT THROUGH REAGAN (1997).

30. Gary Zuk, Deborah J. Barrow & Gerard S. Gryski, *The Multi-User Database on the Attributes of United States Courts of Appeals Judges*, available at <http://www.as.uky.edu/polisci/ulmerproject/auburndata.htm>.

31. Federal Judicial Center, Washington, D.C., available at <http://www.fjc.gov>.

**TABLE 1**  
**JUDICIAL VOTING BY CAREER STAGE: U.S. COURT OF APPEALS, 7TH CIRCUIT**

<b>Circuit Judge</b>	<b>Appointing President</b>	<b>Early Career Score (% Liberal)</b>	<b>Mid-Career Score (% Liberal)</b>	<b>Late Career Score (% Liberal)</b>	<b>Overall Career Score* (% Liberal)</b>
Cummings, Walter (1966-1999)	Johnson	53	39	33	38 (215)
Fairchild, Thomas (1966-2007)	Johnson	61	64	38	50 (119)
Pell, Wilbur F. (1970-2000)	Nixon	38	42	32	38 (120)
Bauer, William J. (1974-	Ford	33	32	28	30 (166)
Wood, Harlington, Jr. (1976-1992)	Ford	34	30	24	29 (100)
Cudahy, Richard D. (1979-	Carter	44	29	28	32 (130)
Eschbach, Jesse E. (1981-2005)	Reagan	47	50	0	31 (42)
Posner, Richard A. (1981-	Reagan	34	18	24	25 (151)
Coffey, John L. (1982-	Reagan	29	26	18	23 (111)
Flaum, Joel M. (1983-	Reagan	37	43	18	30 (114)
Easterbrook, Frank H. (1985-	Reagan	11	18	14	14 (106)
Ripple, Kenneth F. (1985-	Reagan	25	14	20	19 (88)
Manion, Daniel A. (1986-	Reagan	31	4	24	21 (81)
Kanne, Michael S. (1987-	Reagan	11	23	24	20 (92)

\*Total number of judge votes in sample in parentheses. Shaded rows are consistent with theoretical expectations.

Several Republican-appointed judges in this circuit also exhibited declines in conservative voting in their sixth through tenth years on the bench (i.e., their mid-career stage). Specifically, this is evident in the records of five

of the eleven Republican appointees, four of whom are Reagan-appointees. Of those seven judges whose voting records became more moderate between their early and mid-career stages, how did their behavior change as they moved from their second to their third career stage? Here, the table also reveals a mixed pattern. Interestingly, four of the seven judges exhibited voting records that corresponded to the party of their appointing president to a greater degree once they were on the bench for over ten years. Hence, these judges' records had a pattern by which voting that corresponded to policy preferences of the appointing president decreased in the second time period and then increased in their third career stage.

Although the voting records of about half of the judges in the Seventh Circuit in this analysis seemed to moderate somewhat in their mid-career stage, this was not the case across the board. Among the Democratic appointees in this circuit, one judge compiled a record which offered more support for the liberal position during the judge's mid-career stage, but the judge became noticeably more conservative in his later years on the bench. Six Republican appointees, including four Reagan appointees, moreover, became increasingly conservative in their voting behavior during their mid-career stage. Of this group of seven judges whose voting records become more strongly liberal or conservative in their mid-career stage relative to their early career stage, four of the judges' scores waned a bit in their most senior time period on the bench, whereas three judges, all appointed by Republican presidents, exhibited voting patterns that were increasingly conservative as they moved from their middle to late career stages.

How do these findings compare to these judges' colleagues in other circuits? Table 2 provides some insight on the Fourth Circuit.

**TABLE 2**  
**JUDICIAL VOTING BY CAREER STAGE: U.S. COURT OF APPEALS, 4TH CIRCUIT**

<b>Circuit Judge</b>	<b>Appointing President</b>	<b>Early Career Score (% Liberal)</b>	<b>Mid-Career Score (% Liberal)</b>	<b>Late Career Score (% Liberal)</b>	<b>Overall Career Score* (% Liberal)</b>
Winter, Harrison (1966-1990)	Johnson	35	47	50	44 (160)
Butzner, John D., Jr. (1967-2006)	Johnson	27	51	49	44 (147)
Russell, Donald S. (1971-1998)	Nixon	33	27	26	28 (183)
Widener, Hiram E., Jr. (1972-2007)	Nixon	28	16	28	25 (197)
Hall, Kenneth K. (1976-1999)	Ford	42	28	43	39 (126)
Phillips, James D., Jr. (1978-	Carter	35	48	46	43 (112)
Murnaghan, Francis D., Jr. (1979-2000)	Carter	33	40	51	44 (99)
Sprouse, James M. (1979-1995)	Carter	38	57	48	47 (68)
Ervin, Samuel J., III (1980-1999)	Carter	48	43	50	47 (114)
Wilkinson, J. Harvie, III (1984-	Reagan	39	50	19	31 (110)
Wilkins, William W. (1986-	Reagan	28	26	42	34 (74)
Niemeyer, Paul V. (1990-	GHW Bush	28	13	44	23 (69)

\*Total number of judge votes in sample in parentheses. Shaded rows are consistent with theoretical expectations.

As the figures in Table 2 indicate, few of the judges' voting records were consistent with expectations surrounding career stage effects. Only two of the twelve judges' voting scores were more moderate in their mid-career stage than their early career stage. More moderate voting behavior in a judge's second career stage appears to be the exception and not the rule in the Fourth Circuit sample of decisions analyzed. Rather, across the board, as experience

on the bench increased, Democratic appointees became more liberal in their decision making and Republican appointees became more conservative.

Across six Democratic appointees in this circuit, for example, three of the judges exhibit their strongest percentage liberal voting record in their sixth through tenth years on the bench. Three of six appointees, moreover, register their highest liberal voting records in their most senior period on the bench. The Republican-appointed judges in this sample exhibited similar behavior. Generally, their career voting records did not seem to be tempered by institutional considerations during their middle career period, at least not in a manner reflected in these individuals' average liberal voting scores. In fact, many of these judges' voting records reveal they were deciding cases more frequently in the conservative direction in their mid-career stage relative to their early career stage. Interestingly, it appears that seven of the twelve judges indicated an increase in policy-based voting between their early and mid-career stages and a corresponding decrease in this behavior as they moved into their late-career stage, although for some judges this shift was rather modest.

The profile of judicial decision making on the Eighth Circuit offers an additional comparison (see Table 3). First, as with the judges examined in other appeals courts, a number of Eighth Circuit judge voting patterns exhibited rather substantial change over the career stages examined, again revealing that an overall career score masks important variation across key time periods. As seen in the table, most judges in the Eighth Circuit sample did exhibit voting trends indicating changes in the extent of policy-based voting as the judge moved from an early to a mid-career stage. Specifically, four of the six Democratic appointees had more moderate percentage liberal voting records in their mid-career as opposed to their early career on the circuit bench. Among the Republican appointees, seven of the ten judges (including four of the six Reagan appointees) had more moderate voting records in their mid-career as opposed to their early career, suggesting that these judges were more likely to vote in a manner consistent with their policy preferences (and/or those of the appointing administration) during the initial stage of their tenure. Collectively, voting scores for 11 of the 16 judges shifted in a manner indicating less frequent policy-based voting (as one might expect, given the party of the appointing president). In addition, it is interesting to note that, of the eleven Eighth Circuit judges who moderated their ideological positions in their second career stage, nine compiled voting records in their late career stages which appeared to mark a return to the policy predispositions which characterized their early years on the bench.

**TABLE 3**  
**JUDICIAL VOTING BY CAREER STAGE: U.S. COURT OF APPEALS, 8TH CIRCUIT**

<b>Circuit Judge</b>	<b>Appointing President</b>	<b>Early Career Score (% Liberal)</b>	<b>Mid-Career Score (% Liberal)</b>	<b>Late Career Score (% Liberal)</b>	<b>Overall Career Score* (% Liberal)</b>
Gibson, Floyd (1965-2001)	Johnson	36	26	30	30 (148)
Heaney, Gerald (1966-2006)	Johnson	46	38	35	37 (214)
Lay, Donald (1966-2007)	Johnson	45	46	36	40 (183)
Bright, Myron (1968-	Johnson	40	37	39	39 (184)
Ross, Donald Roe (1970-	Nixon	35	26	15	23 (151)
Henley, Jesse Smith (1975-1997)	Ford	21	36	29	27 (94)
McMillian, Theodore (1978-2006)	Carter	31	24	24	26 (161)
Arnold, Richard S. (1979-2004)	Carter	31	42	20	28 (127)
Gibson, John R. (1982-	Reagan	28	29	22	26 (100)
Fagg, George B. (1982-	Reagan	26	20	25	24 (103)
Bowman, Pasco M., II (1983-	Reagan	23	42	23	29 (101)
Wollman, Roger L. (1985-	Reagan	41	24	26	30 (94)
Magill, Frank J. (1986-	Reagan	15	26	10	19 (59)
Beam, C. Arlen (1987-	Reagan	16	36	29	27 (64)
Loken, James B. (1990-	GHW Bush	13	21	6	14 (69)
Hansen, David R. (1991-	GHW Bush	0	21	13	13 (64)

\*Total number of judge votes in sample in parentheses. Shaded rows are consistent with theoretical expectations.

In summary, on a basic level, variation in the percentage of liberal voting across career stages is evident in all of the circuits analyzed in the study, thus indicating that viewing a judge's overall career liberal score in isolation can mask substantively interesting changes that affect that score over time. The interpretation of the figures reported here is informed by a recent comprehensive study of individual judge votes in all circuits for the time period, 1968-1996.<sup>32</sup> After modeling the likelihood of a liberal vote by a circuit judge with a broad range of predictors identified by previous scholarship, this study employed a statistical method to examine whether career stage-and other factors-helped explain one's ability to successfully predict judicial votes. Votes by judges sitting in their first few years on the bench were "easier" to predict than those by judges who were in the middle stages of their careers. Upon further examination, the analysis of individual votes found that policy preferences predicted judicial voting across all career stages, but were particularly strong influences on voting during the initial period on the bench. The present analysis of judicial voting records (rather than individual votes), particularly those compiled in the Eighth Circuit, illustrate that finding. Nevertheless, this pattern was not prevalent in half of the Seventh Circuit judges studied. And, judges in the Fourth Circuit compiled voting records that, if anything, moved away from moderation over the course of their careers. The particularly striking pattern in the Fourth Circuit argues for further examination of circuit level processes associated with judicial socialization that underlie career stages. As noted earlier, the process of acclimation is expected to foster institutional ties that will contribute to moderation in judicial voting in the mid-career stage. However, if the circuit is characterized by cleavages among the judges, then tenure on the bench may foster institutional values which emphasize conflict and therefore sharpen, rather than diminish, policy-based voting. In this respect, judicial socialization into the norms of the Fourth Circuit may have contributed to the career trends reported in this analysis. From 1994-1998, the Fourth Circuit had the second highest rate of *en banc* rehearings among the courts of appeals.<sup>33</sup> Utilizing the data for this analysis, estimates of the dissent rates for all circuits from 1998-2001 were calculated. These estimates indicate that judges in the Fourth Circuit authored dissenting opinions in

---

32. Erin B. Kaheny, Susan B. Haire & Sara C. Benesh, *Change over Tenure: Voting, Variance, and Decision Making on the U.S. Courts of Appeals*, AM. J. POL. SCI. (forthcoming, 2008).

33. See J.A. MCKENNA, L. L. HOOPER & M. CLARK, CASE MANAGEMENT PROCEDURES IN THE FEDERAL COURTS OF APPEALS 22 (Federal Judicial Center 2000). In table 14, the figures for the number of *en banc* rehearings are reported for 1994-1998. The portrait indicates that the Fourth Circuit was second only to the much larger Ninth Circuit in terms of the frequency with which the court conducted an *en banc* rehearing. *Id.*

approximately 15 percent of the opinions, substantially higher than the estimate for the Seventh Circuit (5 percent) and the Eighth Circuit (9 percent). Clearly, the norms of the Fourth Circuit fueled conflict, rather than accommodation.

Heterogeneity in the composition of the circuit may also be expected to shape judicial socialization underlying career stages. In the geographically compact Seventh Circuit, the makeup of this court during this time period was dominated by Republican appointees, particularly those named by the Reagan administration. In this respect, an individual's career on a relatively homogenous bench would not be expected to result in noticeable change for many, as institutional pressures fuel interaction between those who are more similar than different in policy predispositions. Evidence of moderation in judicial voting was strongest in the Eighth Circuit staffed by judges from multiple appointment cohorts and a geographically diverse area. Hence, one might expect, in general, that Republican judges will moderate most when surrounded by more judges appointed by Democrats, and vice versa.

In addition to circuit level influences, other individual-contingent factors may account for the different findings, including explanations that focus on these judges' confirmation hearings. If the nature of these judges' confirmation hearings were less politically charged, then we might not expect to see the most consistent pattern of policy-based voting emerge in their *initial* career period. Interestingly, there is some evidence for this proposition. Looking at the political context of these judges' appointments as indicators of a more partisan environment, only seven of the 22 judges who were less ideological in their initial period relative to their mid-career stage were appointed under conditions in which the Senate was controlled by the president's opposing party. Most of these judges thus enjoyed appointment conditions under unified government with respect to the Senate and the presidency, and the president enjoyed appointment conditions in which less than 50 percent of the Senate included opposition party members.

In addition, it is important to note the possibility that the time periods utilized in the study may have influenced the nature of the results. Indeed, there are a number of alternative time periods that one might choose in order to designate three major career stages for circuit court judges. Some scholars, for example, might argue that the "early career stage" be designated as the first two years on the bench. Moreover, although recent empirical research validates the notion of a three-stage model,<sup>34</sup> it is possible that some of the judges analyzed do not fit that particular mold.

---

34. See Kaheny, Haire & Benesh, *supra* note 32.

Finally, it is crucial to note that the present analysis does not take into consideration that a judge's percent liberal score is likely to be influenced by a number of factors that were untapped given the focus on voting records. For example, in a given case, judicial choices to render a liberal or conservative decision might be influenced by legal factors, institutional factors, case-, and judge-specific factors. Therefore, the percentage of votes cast in a liberal direction, i.e., the collection of these individual decisions, would also be a function of multiple variables. More sophisticated modeling efforts, therefore, might very well explain the unexpected findings we describe.

### CONCLUSION

Scholars have increasingly recognized the important role played by the U.S. Courts of Appeals in the development of legal policy in the United States. Consequently, more attention has been paid toward investigating the determinants of circuit judge voting decisions, including the apparent relationship between these judges' policy preferences and their voting behavior. Although some scholars have examined whether voting fluctuates during a judge's freshman period, we argue that consideration of a judge's entire career is necessary in order to understand the nature of a circuit judge's decision making process, including the extent to which policy preferences consistently drive this behavior. In particular, we assert that decisional variance among circuit judges is, to some extent, a function of the judge's tenure on the bench.

In the present analysis, one such means by which legal scholars can begin to assess the role of career stage on decisional variance is provided. Specifically, the percentage of liberal votes cast by Seventh Circuit judges were examined across these judges' early-, mid-, and late-career stages and then compared to judges on the Fourth and Eighth Circuits. As described above, the expectations for career stage differences are rooted in the nature of judicial selection and circuit judge socialization. Specifically, it is asserted that newer judges will exhibit less variability in their decision making than their more senior colleagues as a likely result of recent experiences in partisan judicial selection processes. Given this recent experience, one might expect newcomers to more consistently institute the policy preferences of their appointing administrations; i.e., that newly-appointed liberal judges should more consistently vote in the liberal direction translating into higher percentage liberal voting scores while newly-appointed conservative judges should more likely vote in a conservative fashion thus leading to lower percent liberal voting records, especially because no socialization has yet taken place that might serve to de-emphasize policy preferences. By mid-career, however,

such consistency is expected to be offset by increasing institutional commitment to the circuit and its norms. Moreover, we proposed that judges in the most senior group (i.e., late-career judges) while having firm policy preferences and institutional knowledge, may either begin to more consistently vote according to their political preferences as they become free of administrative obligations, or they might be more consistently influenced by circuit institutional variables. They might even hold more tightly to the past and adhere more closely to circuit precedent, of which their previous decisions are a part. In terms of percent liberal voting behavior, these factors could drive a given judge's percent liberal vote score in the positive or negative direction. However, either of these forces might very well be reflected in a significant change in judicial behavior in this last stage as compared to a judge's early or mid-career periods on the bench.

The analysis provided mixed support for these expectations. In the Seventh Circuit, half of the judges exhibited more moderate behavior in their mid-career stage while a greater percentage of the voting records analyzed conformed to our expectations in the Eighth Circuit. In the Fourth Circuit, however, almost all of the Democratic appointees' percent liberal voting scores increased as the judges moved from the early to the middle-career stage designated in the analysis. All but one of the Republican-appointed judges in the Fourth Circuit, moreover, registered lower percent liberal scores in their middle-career stage as compared to their early career stage, suggesting a more consistent conservative pattern during this second career juncture. As discussed earlier, understanding these reported career trends in decision making will require greater attention to the circuit-level socializing processes which may be expected to fuel accommodation, rather than conflict.

Even though our expectations were not uniformly supported and, despite the limitations of the approach taken here, the results are quite notable for exhibiting important variation over time in the career voting behavior of the appeals court judges assessed. Indeed, perhaps the most consistent finding in the analysis was the prevalence of "within judge" change across three career stages. By way of reference to the partisan appointment strategy of President Reagan, moreover, one can see that these types of career shifts can have the potential to impede presidential desires to have at least some judicial appointees consistently reflect presidential policy preferences in judicial decisions. It is clear, therefore, that the nature of this change warrants further investigation.