

PATTERNS AND CONSEQUENCES OF JUDICIAL REVERSALS: THEORETICAL CONSIDERATIONS AND DATA FROM A DISTRICT COURT

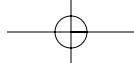
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An important but mainly unexamined topic for understanding court systems is the effect of reversals on the decision making of lower-court judges. Specifically, we do not know whether lower-court judges alter their patterns of decision making in response to reversals by higher courts. This question is important, as reversal is an important tool that higher courts can use to induce lower courts to implement legal policy. The assumption that lower-court judges learn from and respond to reversals is an important factor in the theoretical cohesiveness of the American court system. Using the U.S. District Court for the District of Columbia as the basis for a study, I find support for the notion that judges react to reversals by changing their decision-making patterns in predictable ways.

Reversal, “the annulling or setting aside by an appellate court of the decision of a lower court” (*Black’s Law Dictionary*, 1990:1319), is an important tool available to appellate courts for controlling the law and guiding lower courts. The function of a reversal is to signal that the lower court has made an error and to guide all courts within the jurisdiction of the appellate court toward more uniform legal decisions. As such, reversals are critical for maintaining coherence and consistency in judicial systems and for steering legal policy. However, in order for them to accomplish this goal, reversals must be followed by lower-court compliance. This means that lower courts understand and implement the directions contained in the reversal.

However, it is not at all clear that lower courts do react to reversals in a way that would increase consistency in the way that laws are applied by different judges and different levels of courts. Lower-court judges may continue to follow their own understandings of law and policy even after that understanding has been rejected by the appellate court. Moreover, there is relatively little the appellate court can do to induce compliance by the lower court. This article addresses this topic by discussing the incentives for lower-court judges to change their decision patterns as a result of reversals and evaluating whether such changes occur.

The empirical section of the article looks at patterns of reversals among judges on the United States District Court for the District of Columbia. The data consist of cases involving claims of discrimination and violations of civil rights decided between 1985 and 2004. I explore the data to determine whether higher probabilities of reversal are associated with particular judges and with case factors and whether judges react to reversals by changing their decision patterns. Although the results are based on a very limited data set, they indicate several interesting patterns. In these data, decisions by Reagan appointees were significantly more likely to be appealed than deci-



sions by Clinton appointees, and circuit panels with a majority of Democratic judges were significantly more likely to overturn district-court decisions. Even more interestingly, regression analysis shows that the district judges in this study respond to reversals by changing their decision patterns. The more often a judge's pro-plaintiff decisions have been reversed, the more likely that judge is to make pro-defendant decisions in the future. Correspondingly, the more often a judge's pro-defendant decisions were reversed, the more likely that judge is to make pro-plaintiff decisions in the future.

The amount and nature of the data on which this analysis is based limit the confidence with which inferences can be made from the study. The eleven judges examined here comprise less than 2 percent of the 667 United States district judges (Carp, Stidham, and Manning, 2004:44). The District of Columbia District also is in some ways atypical of the federal district courts in general: it sits in the nation's capital and is the only district court in its circuit. However, focusing on a single district makes the study more tractable by limiting the number of judges, at the district and circuit level, whose attributes and decisions had to be studied, and this particular district court is appropriate because of the high proportion of civil-rights cases on its docket (Mecham, 2004).

Despite its limitations, this study illuminates the role played by reversals in judicial hierarchies. To begin with, this study brings attention to an important but neglected question: To what extent do lower-court judges change their decision-making patterns as a result of reversals? The article discusses, from a theoretical perspective, the effects that reversals may have on lower-court judges in general and the results of previous studies bearing on this question. The empirical section of the analysis can best be viewed as a pilot study: It illustrates a method for studying the effects of reversals on lower-court judges, and presents some suggestive findings.

THE FUNCTION OF REVERSALS IN JUDICIAL HIERARCHIES

Political scientists have given much attention lately to the effects of hierarchies in political institutions (e.g., Cox and McCubbins, 1993; Shepsle and Weingast, 1987; Weingast and Marshall, 1988), and judicial scholars have investigated whether lower-level courts respond to the preferences and rulings of supervising courts (Songer, Ginn, and Sarver, 2003; Songer, Segal, and Cameron, 1994; Klein and Hume, 2003; Benesh and Reddick, 2002). Much of this research has focused on lower-court judges' abilities and tendencies prospectively to avoid reversal by higher courts (Klein and Hume, 2003; Songer, Ginn, and Sarver, 2003; Smith and Tiller, 2002). An important related question that has not yet been investigated is whether lower-court judges change their patterns of decisions as a *result* of reversals by supervising courts. Actual reversals are much more tangible and, therefore, may be more likely to have impact than the mere potential for reversal.

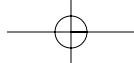
In order for a hierarchical court system to maintain consistency in the way different courts resolve disputes, there must be some mechanism to communicate legal policy between higher and lower courts. If the principles endorsed by higher courts are

to be used by lower courts to decide cases, the higher court must have effective tools both for communicating the principles and for inducing lower courts to use those principles. If the higher court has such tools and uses them, lower courts are more likely to decide cases consistently with each other and with the higher court's doctrine.

A reversal is the most definitive and forceful mechanism for communication of legal policy possessed by a higher court. It is also the only commonly used tool possessed by higher courts that imposes any costs on lower-court judges. Because of these attributes, reversals are likely to play an important role in maintaining uniformity in judicial decisions. Of course, reversals are not the only way that higher courts can urge lower courts to change the way they implement legal policy. Higher courts can issue writs of mandamus ordering lower courts to perform specified actions. However, judicial opinions are the most straightforward way for this hierarchical communication to occur. Opinions can list and explain the criteria that higher courts want lower courts to apply in deciding cases; are available for all lower-court judges to see; and apply to all lower courts supervised by the higher court that issues the opinions. However, while the opinions apply equally to all such lower-court judges, judges not directly affected by an opinion are not likely to feel the impact of the opinion as much as the judge whose decision was affirmed or overturned by the circuit court.

Students of judicial behavior commonly argue that judges do not like to have their decisions reversed (Baum, 1978; Caminker, 1994:77-78; McNollgast, 1995). This assumption can have several bases. First, being overturned implies that a judge, or panel of judges at a higher level, has determined that the lower-court judge applied the law incorrectly. Caminker (1994:78, n. 273) speculates that a judge "might prefer to avoid reversal in order to evade conscious awareness of the real constraints on her power." Murphy (1959:1030) notes, "Judges, no more than other men, enjoy the prospect of public correction and reprimand." Similarly, Posner (1990:224) asserts that judges are "highly sensitive to being reversed." Nonetheless, some judges in some contexts may wear reversals as badges of honor. Interviews with federal judges support the notion that judges dislike having their decisions reversed. An anonymous district judge from the District of Columbia expressed his distaste for having decisions reversed: "Nobody likes it. I don't like it at all. But you have to call them as you see them, and sometimes they [the circuit-court judges] just don't see them in the same way. . . . When the Supreme Court reverses the appeals court and rules in your favor,' the judge says, "'that's the real happy situation'" (Rodriguez, 1993:1).

A second negative aspect of a reversal is its public nature, meaning that others whose respect the judge desires will be aware of it. Although some reversals are unpublished and may, therefore, be less threatening to judges, even these do not necessarily escape the notice of the legal community. Reversal may cause the lower-court judge to perceive that he or she has lost some of the respect of the legal community. Colby (1987:1051) notes the "professional obloquy" associated with reversal and Macey (1989:111) asserts that reversals are embarrassing. Reversals may also be noted by those who control the judge's job prospects. If the judge is elected, frequent



reversals may become an issue in the next election. If the judge has been appointed, as with federal judges, frequent reversals may be perceived as reducing his or her chances of advancement to a higher court. For example, one of the arguments against Senate confirmation of G. Harold Carswell's nomination to the United States Supreme Court was that his district-court decisions had been reversed "more than twice as often as those of the average federal district judge" (Ross, 1987). Judges also might feel that reversals, especially numerous or frequent reversals, will lower their standing among groups whose respect they seek, such as the lawyers and judges with whom they work and socialize. The fact that reversal rates are sometimes published in legal news outlets (see Rodriguez, 1993; Mintz, 1996; Herman, 1996) can only increase this anxiety and thus the negative utility of reversal.

In addition to being embarrassing and damaging to the career prospects of a judge, reversals have policy effects. Having a decision reversed or remanded means that the outcome preferred by the lower-court judge is put in jeopardy. It may also mean that the legal policy espoused by the lower-court judge is rejected by the higher court and is therefore less likely to influence the evolution of legal policy more generally. Finally, lower-court judges invest time and effort in making and justifying their decisions. A reversal or remand means that this investment of time and effort has not generated a positive return. A remand probably means that more time will have to be invested in the case. In sum, reversals are public corrections of a judge's work that may undermine the judge's standing among peers and superiors and impose additional work on the judge. These are ample reasons for avoiding reversals.

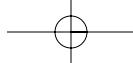
POTENTIAL REVERSALS COMPARED TO ACTUAL REVERSALS

Reversals can influence judges in a couple of ways. Aversion to being reversed can motivate lower-court judges to conform their decisions to doctrines articulated by higher courts. In this way, it is the predicted cost of reversal, or the anticipated negative utility of having a decision reversed multiplied by the probability that the decision will be reversed, that motivates lower-court judges. For district-court judges, evaluating the probability of reversal is complicated. This uncertainty comes from several factors. First, a district judge does not know whether the losing party will appeal the decision to a higher court. If they do not, the chance of reversal is zero. A second factor is that the law is simply ambiguous or novel in many cases. The fact that both the plaintiff and defendant are willing to invest money to litigate a legal issue suggests that each side believes it has a substantial chance of winning (Priest and Klein, 1984). Since cases reaching trial are "close calls," it is difficult for a district judge to predict how the circuit court will view the issue. Finally, if the decision is appealed, the district judge cannot know which judges on the circuit court will hear the case. Once the appeal is filed, it will be assigned to a randomly selected three-judge panel. The fact that predicting which decisions are likely to be reversed is so complicated makes a strategy of prospectively avoiding reversal unlikely to succeed.

A couple of recent research projects have investigated the role of reversals in the decision processes of federal-circuit-court judges. Klein and Hume (2003) separate federal-circuit-court decisions on the subject of search and seizure into sets that are more or less likely to be reviewed by the Supreme Court. They hypothesize that if fear of reversal plays a significant role in the circuit court's decision, the circuit court will be less likely to deviate from the Supreme Court's preferences in cases the Court is likely to review. They find, contrary to their expectations, that judges are significantly *more* likely to deviate from the Supreme Court's preferences in cases the Court is likely to review. Similarly, Songer, Ginn, and Sarver (2003) examine a set of circuit-court decisions very unlikely to be reviewed by the Supreme Court—tort-diversity cases. They hypothesize that if fear of reversal is what prevents circuit judges from giving free play to their policy preferences, judges' policy preferences should be extraordinarily important in these types of decisions (because they are virtually immune from review). Contrary to this, they find that legal factors explain a significant amount of the variation in the outcomes of these cases.

The findings of Klein and Hume (2003) and Songer, Ginn, and Sarver (2003) suggest that avoiding future reversals is not a primary factor in the decision process of federal-circuit-court judges. Of course, since the Supreme Court takes so few cases, circuit-court decisions in general have a much lower chance of being reviewed than district-court decisions. In 2004, 62,762 cases were filed in the U.S. Circuit Courts of Appeals (Mecham, 2004). If the U.S. Supreme Court reviews about 100 of these cases per year, then the probability of Supreme Court review of a circuit-court decision is approximately 16 out of 10,000, or 0.16 percent. On the other hand, between 25 and 30 percent of district-court civil-rights decisions are commonly appealed (Kafka, Cecil, and Lombard, 1995). Even adding the possibility of *en banc* review by the circuit, review by higher courts is a very remote possibility for circuit-court judges, but a very real possibility for district-court judges.

In contrast to the studies discussed above, which focused on the effects of *potential* reversal on judicial behavior, this analysis focuses on the effect of *actual* reversal on judicial behavior. How might the negative utility of actually being reversed differ from the anticipated negative utility of being reversed? Herbert Simon's adaptation of the rational decision making model to the limitations of humans (Simon, 1955) suggests that the utility of an outcome may change as the actor experiences that outcome. The actor's experiences "may change the pay-off function—it doesn't know how well it likes cheese until it has eaten cheese" (Simon, 1955:113). In the context of judicial decision making, this might mean that the actual fact of being reversed stings more or less than the judge anticipated. Reversal might sting more if the negative consequences discussed above materialize more fully than the judge anticipated. It might sting less if the negative consequences discussed above materialize less fully than anticipated. Interestingly, Klein and Hume (2003) find that circuits that had been reversed within the past two years were particularly likely to defer to the Supreme Court (make decisions consistent with the Court's predicted preferences). This suggests that recent reversals influence judges' decisions.



Another reason that judges may react to reversals is because they are sincerely trying to implement the legal rules articulated by the circuit. Judges may view reversal as a signal that their understanding of the law is out of line with the law of the circuit. If so, the reversal could trigger a change in the way they understand and implement the law, leading to a change in their pattern of decisions. This understanding of how individual judges interact in hierarchical judicial systems is consistent with both the traditional legal respect for stare decisis as well as the “team” model of judging that is emphasized in the law and economics literature (Shavell, 1995; Kornhauser, 1995). The “team” model asserts that judges seek to eliminate legal error in the resolution of cases.

The impact of a reversal, or the message that the judge receives from having a decision reversed, may also be affected by who made the decision. If a conservative judge or judicial panel reverses a liberal decision, the lower-court judge might regard the problem as being not with his or her decision but with the political nature of the panel that reversed. On the other hand, if a liberal-district-court decision is reversed by a liberal circuit court, the district-court judge might view the reversal as indicating that his or her decision was out of line with the law of the circuit. This view is supported by Judge Stanley Sporkin of the D.C. District Court:

“It’s an ideological court up there [The D.C. Court],” says Sporkin, echoing the sentiments of many of his colleagues. “If it goes to three people up there, it could go one way, and if it goes to another three people, it can go another. The law isn’t a science. It’s what the judges say it is” (quoted in Rodriguez, 1993).

Similarly, if a judge perceives that the court immediately above him or her in the judicial hierarchy is out of step with an even higher court, that judge may not pay as much attention to reversals. Wasby (2003) found this to be a common situation in the U.S. District Court for the District of Oregon, the decisions of which were frequently reversed by the Ninth Circuit Court of Appeals and then re-reversed by the U.S. Supreme Court.

In sum, reversals carry psychological, social, and policy-related costs for the judge whose decision is reversed. Although previous research has not found that circuit-court judges attempt to avoid reversals, there are good reasons to expect that district judges would react to reversals.

PATTERNS OF REVERSALS ON THE D.C. DISTRICT COURT

In this next section of the article I evaluate data on appeals and reversals in the D.C. District Court with a focus on three questions:

- How are reversals and appeals distributed across judges?
- What factors make appeal and reversal more likely?
- Do individual judges react to reversals of their own decisions by making fewer of the types of decisions that have been reversed?

Area of Law. I investigate these questions with data gathered in civil-rights cases decided by the U.S. District Court for the District of Columbia. I focus on a single area of law to increase the comparability of the cases. Civil-rights cases seem to be a good choice for several reasons. There are a large enough number of such cases decided by the D.C. District Court to evaluate patterns using statistical tests. Civil-rights decisions also tend to implicate the policy preferences of the judges. This is important because I want to discuss the effect of judges' policy preferences on their decisions. Other areas of law that provide a large number of cases are less likely to implicate policy preferences in a predictable fashion. Civil-rights cases are more suitable for study than criminal cases because criminal appeals are more likely to be considered frivolous by higher-court judges, in part because about two-thirds of criminal appeals in the federal courts are handled by publicly funded lawyers, and the same proportion are filed by defendants who pleaded guilty to at least one of the offenses charged (Scalia, 2001). Publicly funded appeals may be more likely to be frivolous because the client does not bear the costs of the appeal.

The D.C. District Court is unusual in a couple of ways. It is the only district court in its circuit, and it sits in the national capital and so handles a large number of cases in which the federal government is a party. However, there is no reason to believe these differences affect the reactions of district judges to reversals. The proportions of district-court decisions appealed and reversed by the D.C. Circuit are not out of line with the proportion of reversals in cases from other districts. Kafka, Cecil, and Lombard (1995) state the percentage of civil-rights decisions appealed nationwide as 25 to 30 percent, roughly comparable to the 36.2 percent in the data presented here. Similarly, in their studies of federal-district-court judges, Mintz (1996) and Herman (1996) report average reversal rates of 31 percent and 21 percent, respectively, compared with 28.2 percent for the data analyzed here.

Data. Data were collected on all the civil-rights decisions made by judges appointed by Presidents Clinton or Reagan who served at least five years on this district court. There are no judges appointed by President George H. W. Bush in the analysis because his lone appointee there, Michael Boudin, served only about seventeen months on that court before being elevated to the U.S. Court of Appeals for the First Circuit.

The LexisNexis database was searched for D.C. District Court decisions in which the terms "civil rights" or "discrimination" appeared in either the "core terms" or "core concepts" or "overview" of the opinion, and in which the "judges" segment included the name of one of the specified judges. Searches for eleven judges (see Table 1) produced a total of 730 civil-rights cases decided between 1985 and 2004. The vast majority of these cases involved allegations of discrimination in hiring, firing, or promotion, or discrimination in the distribution of government benefits. In addition, there were some allegations of voting-rights violations and of discriminatory criminal prosecution, that is, people being selected for prosecution on the basis of

race or gender, when a person of a different race or gender would not have been prosecuted for the same behavior. Approximately one-third of the plaintiffs allege race discrimination; assertions of discrimination on the basis of gender, age, physical disability, religion, national origin, and sexual preference are also present.

These data include decisions that were not published in the *Federal Supplement* series. Of the 730 decisions in the data, 265 had no citation to the *Federal Supplement*, which probably means they were unpublished decisions. I have not been able to determine when LexisNexis began including unpublished decisions from this district court, so I do not know if my data are representative of all decisions made during the time frame of the study or if published decisions are overrepresented. Ringquist and Emmert (1999), studying federal-district-court cases, find that judicial behavior differs in significant ways between published and unpublished decisions. It is possible that some of the variables analyzed in this article are correlated with whether a particular decision was published.

These data were merged with data from the Federal Judicial Center's database of federal district- and appellate-court cases (Federal Judicial Center 2000, 2001). This furnished information on which cases were appealed and how the appeals were resolved. I counted a case as appealed if the Federal Judicial Center's database of Federal Circuit Court decisions included a disposition for the case. From the initial list of 730 decisions, 86 decisions were eliminated as duplicates, resulting from a judge ruling on several different issues in the context of a single case, as were twelve cases in which the plaintiffs were asserting reverse discrimination.¹ The result is a data set of 632 cases, of which 227 were appealed.

A General View of Civil-Rights Decisions in the D.C. District Court. Descriptive data on decisions and appeals of district-court decisions of individual district judges are shown in Table 1. There is substantial variation in both judicial rulings and the way the judges are treated by appellants and the D.C. Circuit. The percentage of a judge's decisions in favor of plaintiffs ranges from a low of 32.9 percent to a high of 75 percent. The percentage of rulings appealed ranges from a low of 13.6 percent to a high of 58.9 percent. The variation in the percentage of appealed decisions overturned is particularly striking: Judge Friedman's decisions are overturned only 6.7 percent of the time, while Judge Jackson's decisions are overturned 45.5 percent of the time. This high level of variation suggests either that some judges care more than others about being reversed, or that some judges are better than others at avoiding reversal. Of course, the vagaries of the types of cases that a judge hears might cause some of this variation.

¹ Cases alleging reverse discrimination present a problem for classifying the ruling as liberal or conservative. In these cases, a ruling for the plaintiff can be seen as conservative because it directs benefits toward the majority race or gender, but it could also be seen as liberal because it restricts the defendant's discretion in terms of how he or she treats individuals and expands the sphere of what is considered illegal discrimination.

Table 1
Distribution of Rulings, Appeals, and Reversals by Judge

Appointing President	Judge	Number of Decisions	Number of Plaintiffs	Percent in Favor of Plaintiffs	Number of Decisions Appealed	Percent of Decisions Appealed	Number of Decisions Overturned	Percent ofAppealed Decisions Overturned	Percent of Total Decisions Overturned
Reagan	Harris	73	24	32.9	43	58.9	11	25.6	15.1
Reagan	Hogan	90	39	43.3	25	27.8	6	24.0	6.7
Reagan	Jackson	19	13	68.4	11	57.9	5	45.5	26.3
Reagan	Lamberth	92	60	65.2	46	50.0	16	34.8	17.4
Reagan	Revercomb	22	9	4.09	9	40.9	3	33.3	13.6
Reagan	Sporkin	53	22	41.5	20	37.7	5	25.0	9.4
Totals for Reagan Judges		349	167	47.8	154	44.1	46	29.9	13.2
Clinton	Friedman	56	28	50.0	15	26.8	1	6.7	1.8
Clinton	Kessler	44	33	75.0	6	13.6	1	16.7	2.3
Clinton	Robertson	42	21	50.0	20	47.6	7	35.0	16.7
Clinton	Sullivan	39	24	61.5	17	43.6	5	29.4	12.8
Clinton	Urbina	102	46	45.1	15	14.7	4	26.7	3.9
Totals for Clinton Judges		283	152	53.7	73	25.8	18	24.7	6.4
Totals		632	319	50.5	227	36.2	64	28.2	10.1

If we aggregate the statistics for judges appointed by Presidents Reagan and Clinton, respectively, we find, not surprisingly, that the Reagan appointees were less likely to rule in favor of civil-rights plaintiffs than were the Clinton appointees. Reagan appointees ruled in favor of plaintiffs 47.8 percent of the time, while Clinton appointees ruled in favor of plaintiffs 53.7 percent of the time, a difference that is statistically significant at the .10 level. The difference between Reagan judges and Clinton judges in the rates of appeal is statistically significant at the .05 level, with Reagan appointees' decisions being more likely to be appealed. Among decisions appealed to the circuit courts, Reagan judges' were overturned in 29.9 percent of the cases compared to 24.7 percent for Clinton judges, a difference that is not statistically significant. However, 13.6 percent of all decisions made by Reagan judges were overturned, compared to only 6.4 percent of the Clinton judges' decisions, a difference statistically significant at the .01 level. This difference in total decisions reversed on appeal is largely a function of the fact that more of the decisions by Reagan judges are appealed. Part of the explanation for this discrepancy is that Reagan judges are more likely to decide cases in favor of defendants, and plaintiffs are more likely than defendants to appeal, as we will soon see.

Comparisons of rates at which Reagan and Clinton appointees' rulings are appealed demonstrate prominently the higher proportion of appeals from decisions made by Reagan appointees (see Table 2). Of pro-plaintiff decisions, 37.1 percent made by Reagan appointees were appealed compared with 23.7 percent of Clinton

Table 2
Comparing Rates of Appeal Between Types of Litigants and Judges

	Pro-Plaintiff Decisions		Pro-Defendant Decisions	
	District Judge Appointed by Reagan	District Judge Appointed by Clinton	District Judge Appointed by Reagan	District Judge Appointed by Clinton
Decision appealed	62 (37.1%)	36 (23.7%)	92 (50.6%)	37 (28.2%)
Decision not appealed	105 (62.9%)	116 (76.3%)	90 (49.4%)	94 (71.8%)
Total	167	152	182	131
p-value		0.009		0.0001

appointees' pro-plaintiff decisions. Among pro-defendant decisions, a surprising 50.6 percent of decisions made by Reagan appointees were appealed, compared to 28.2 percent of pro-defendant decisions made by Clinton appointees. Both of these disparities are statistically significant at the .05 level.

It is also noteworthy that decisions favoring defendants are significantly more likely to be appealed than decisions favoring plaintiffs. Put another way, losing plaintiffs in these discrimination cases are more likely to appeal than losing defendants. Overall, 129 of 313 (41.2 percent) pro-defendant decisions were appealed compared with 98 of 319 (30.7 percent) of pro-plaintiff decisions, statistically significant at the .05 level. This trend is apparent among both sets of judges, although larger among decisions made by Reagan appointees. The fact that the disparity in appeal rates is larger among Reagan appointees' decisions is consistent with the conventional wisdom regarding the tendencies of these judges. When the trial judge is a Reagan appointee, losing plaintiffs may be more likely than losing defendants to believe the decision was based on policy preferences and, therefore, may be more likely to appeal the decision. Overall, the data show that even after controlling for the larger proportion of pro-defendant decisions made by Reagan appointees, their decisions are more likely to be appealed.

We now turn to appellate-court treatment of these appeals, examining pro-plaintiff and pro-defendant decisions upheld and overturned by Republican and Democratic circuit-court panels. Republican (or Democratic) panels are defined as those on which a majority of the members were appointed by Republican (or Democratic) presidents. There is no noticeable bias in the way that Republican and Democratic panels treat pro-defendant and pro-plaintiff decisions (see Table 3). Republican panels upheld about 81 percent of pro-defendant decisions but only about 68 percent of pro-plaintiff decisions. Democratic panels, on the other hand, uphold about 68 percent of the pro-defendant decisions but only 60 percent of the pro-plaintiff decisions. Thus, regardless of which party's judges constituted the panel majori-

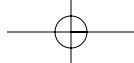
Table 3
Comparing Rates of Reversal Between Types of Litigants and Circuit Panels

Decision on Appeal	Pro-Plaintiff Decisions		Pro-Defendant Decisions	
	Republican Circuit Panel	Democrat Circuit Panel	Republican Circuit Panel	Democrat Circuit Panel
Upheld	39 (68.4%)	24 (60%)	73 (81.1 %)	26 (68.4%)
Reversed	18 (31.6%)	16 (40%)	17 (18.9%)	12 (31.6%)
Totals	57	40	99	38
p-value	0.39		0.12	

ty, panels are more likely to uphold pro-defendant decisions than pro-plaintiff decisions; all panels overturned a higher proportion of pro-plaintiff decisions (34 out of 97, or 35.1 percent) than pro-defendant decisions (29 out of 128, or 22.7 percent). This difference is statistically significant at the .05 level and is consistent with a recent large-scale study of the treatment of employment-discrimination lawsuits by federal courts of appeals (Clermont and Schwab, 2004).

Of particular note is the overall tendency of Democratic panels to overturn district-court decisions. Overall, Democrat-dominated panels reversed about 36 percent (28 of 78) of the district-court decisions they reviewed, but Republican-dominated panels reversed less than 24 percent (35 of 147), with the difference, apparent across both pro-plaintiff and pro-defendant rulings, statistically significant at the .06 level. The Democrat-dominated panels' greater frequency of reversing district-court decisions flies in the face of some expectations based on the ideologies of the Republican and Democratic parties. For example, the identification of the Republican Party with criticism of frivolous lawsuits and the party's animus toward trial lawyers suggest that Republican-appointed judges would be less favorable toward plaintiffs in discrimination cases, and Democrats' commitment to civil rights suggests that they would be more favorable to such lawsuits. However, Republican-dominated circuit panels are less likely than Democrat-dominated panels to overturn district courts' pro-plaintiff decisions. Republican-dominated panels overturned only 31.6 percent of pro-plaintiff decisions, while Democrat-dominated committees overturned 40 percent of such decisions.

The general picture of the distribution of reversals in civil-rights cases in the D.C. Circuit Court of Appeals thus far obtained is that there is a fairly broad distribution of reversals among district judges; it is not the case that a small number of district judges account for nearly all the reversals. There is a noticeable, but not overwhelming, partisan tilt to judicial decision making at the district level: Reagan appointees were slightly more likely than Clinton appointees to favor defendants. Likewise, there does not appear to be a strong partisan bias in reversals by the circuit court: both



Republican and Democratic circuit-court panels reversed pro-plaintiff decisions significantly more often than pro-defendant decisions. This lack of strong partisan bias in may be important in the messages received by district-court judges. If the district-court judges felt that the circuit panels were simply imposing their own policy preferences in deciding cases, they might be less likely to take reversals seriously.

The Effects of Feedback from the Circuit Court. Thus far, we have evaluated general patterns of appeals and reversals in the circuit. However, it may be that judges do not react to general patterns in reversals and affirmances but to the treatment of their own decisions on appeal. Thus, judges who have had a large proportion of their own pro-plaintiff decisions overturned on appeal might react by ruling in favor of defendants more often, even though they would not react to the fact that a large proportion of pro-plaintiff decisions in the district as a whole were overturned on appeal. Here I investigate whether district judges respond to patterns in reversals of their own decisions by shifting their decision patterns in favor of plaintiffs or defendants. I use logistic regression to evaluate the influence of several factors on the dependent variable, which is whether a district-court judge rules in favor of the defendant or the plaintiff in a discrimination case; variables showing a positive impact on the dependent variable increase the likelihood of pro-plaintiff decisions.²

To test the hypothesis that a judge's own record on appeal shapes his or her future decisions, each district-court judge's reversal rate in pro-defendant and pro-plaintiff decisions was calculated. Two different versions of each judge's reversal rate were used (see below), but the theory is similar for both versions. If judges are trying to avoid reversal, they may shift their decisional patterns away from types of decisions that have been reversed relatively often in the past. For example, if a high proportion of a judge's previous pro-defendant decisions have been reversed, that judge might shift toward more pro-plaintiff decisions. A judge could view the high rate of reversal in pro-defendant cases as a signal that his or her policy preferences or understanding of the law are more pro-defendant than those of the circuit court. To reduce the probability of future reversals, that judge might shift toward more pro-plaintiff decisions.

Each judge's decisions were arranged chronologically, and then a variable that recorded the running sum of each judge's pro-defendant and pro-plaintiff decisions was calculated, as was the running sum of pro-defendant decisions reversed and pro-plaintiff decisions reversed. This allowed calculation of a judge's reversal rate for pro-defendant and pro-plaintiff decisions for any point in the judge's career on the district bench. These reversal rates are dynamic in the same way a baseball player's batting average is dynamic: they can rise and fall as the judge makes more decisions that may be appealed and possibly reversed.

The effect of reversal rates is analyzed in a couple of ways. First, the effect of a judge's rate of being reversed for all the judge's decisions is measured. *Judge's Reversal*

² For a discussion of choice of statistical methods, contact the author.

Rate in All Pro-Defendant Decisions is the ratio of pro-defendant decisions reversed on appeal to all pro-defendant decisions made by the particular judge. Similarly, *Judge's Reversal Rate in All Pro-Plaintiff Decisions* is the ratio of pro-plaintiff decisions reversed on appeal to all pro-plaintiff decisions made by the judge. Although a judge's rate of reversal among all decisions made may be a better reflection of the judge's success, media reports on reversal rates typically report judges' reversal rates among decisions appealed. Cases in which appellate courts resolve an appeal, either upholding or reversing the trial judge, are more likely to come to the public's attention than decisions not appealed. Therefore, a second set of variables is calculated reflecting each judge's reversal rate among decisions appealed. *Judge's Reversal Rate in All Pro-Defendant DecisionsAppealed* is the ratio of pro-defendant decisions reversed on appeal to all of the judge's pro-defendant decisions that were appealed. Similarly, *Judge's Reversal Rate in Pro-Plaintiff DecisionsAppealed* is the ratio of pro-plaintiff decisions reversed on appeal to all of the judge's pro-plaintiff decisions that were appealed.

In addition to the two reversal rates for individual judges just described, reversal rates for the district as a whole are calculated. These variables reflect the district-wide reversal rates in all pro-plaintiff decisions, all pro-defendant decisions, pro-plaintiff decisions appealed, and pro-defendant decisions appealed, respectively. These reversal rates reflect the signals being sent to the district as a whole by the D.C. Circuit Court. If district judges are reacting to all the civil-rights decisions from the circuit court, rather than only the circuit court's treatment of their own decisions, these district-wide reversal rates should influence their decisions.

Other variables are included to control for other likely influences. *Plaintiff Lawyers* and *Defendant Lawyers* record the number of lawyers representing the two litigants. The number of lawyers for each side is an indication of the amount of legal resources the litigant brings; previous studies have shown this factor influences the outcome of the case (Galanter, 1974; Songer and Sheehan, 1992). Another factor taken into account is whether the case was decided after the Supreme Court's decision in *Ward's Cove Packing Co. v. Antonio* (1989), which made it more difficult to prove discrimination, but before the passage of the Civil Rights Act of 1991, which overturned the *Ward's Cove* decision. Cases decided while *Ward's Cove* was the law of the land should be more likely to favor defendants, all other things being equal.

Three variables measuring the impact of policy preferences on district-court decisions are also included. Whether the judge making the decision was appointed by President Reagan or by President Clinton is one. Conventional wisdom regarding the views of the two presidents suggests that Reagan appointees will be more likely to vote in favor of defendants in these discrimination cases. *Circuit Republicans* is the proportion of Republican appointees on the D.C. Circuit Court of Appeals at the time of the district court's decision, a proportion that ranged during the period studied from .33 in 1985 to .70 in 1994, with the proportion staying relatively high through the end of the period studied. If district-court judges are influenced by the ideology of the circuit court, higher proportions of Republican appointees on the circuit should lead to fewer

pro-plaintiff decisions, and, therefore, *Circuit Republicans* should be negatively related to the probability of a pro-plaintiff decision. To determine the possible effect of the Supreme Court, the *Supreme Court Median*, the median justice on the Supreme Court in terms of policy preferences, according to Segal and Cover's scores (Epstein et al., 2003:242), is included. Higher scores indicate a more liberal Court. Therefore, if district-court judges are influenced by the ideology of the Supreme Court, this variable should be positively related to pro-plaintiff verdicts.

Two models testing the influence of reversal rates were explored.³ The first included the variables containing the judges' reversal rates among all decisions; the second focused on the judges' reversal rates among decisions appealed. The model including the judges' reversal rates among all decisions correctly categorizes decisions as pro-defendant or pro-plaintiff about 63 percent of the time, which is an improvement of 24.8 percent over guessing that each decision favored the plaintiff. The particular independent variables indicating reversal rates performed as hypothesized. For *Judge's Reversal Rate in All Pro-Plaintiff Decisions*, the higher the proportion of a judge's previous pro-plaintiff decisions that have been reversed by the circuit court, the more likely that judge is to decide in favor of defendants; whereas, for *Judge's Reversal Rate in All Pro-Defendant Decisions*, the higher the proportion of judge's previous pro-defendant decisions that have been reversed by the circuit court, the more likely that judge is to decide in favor of plaintiffs. Both relationships were statistically significant at the .05 level. The district-wide reversal rates also showed significant influence on judges' decisions. High values of *District-wide Reversal Rates in All Pro-Defendant Decisions* led to more pro-plaintiff district-court decisions, and high values of *District-wide Reversal Rates in All Pro-Plaintiff Decisions* led to more pro-defendant district-court decisions, with both relationships being significant at the .01 level. These results suggest that judges are reacting to reversals and were changing their decision patterns in ways consistent with trying to avoid more reversals. The circuit court's treatment of the judge's own decisions and its treatment of the entire district's decisions exert separate influences on the judge's future decisions. Although these results are based on a relatively small data set consisting of observations on one federal district, the fact that each of these reversal rates is significant and in the predicted direction is very interesting.

A few other results from the first model are worth noting. None of the variables related to policy preferences, *Reagan Appointee*, *Circuit Republicans*, and *Supreme Court Median*, show significant influence on district judges' decisions. The fact that *Plaintiff Lawyers* is statistically significant indicates that the more legal personnel representing the plaintiff, the more likely the judge is to decide the case in favor of the plaintiff. The number of defense lawyers does not seem to affect case outcomes.

In the second model, where the reversal rate was based on the proportion of reversals among decisions appealed to the circuit court, the results are broadly similar

³ Full logistic regression data are available from the author.

to those of the first model. Statistical measures indicate that the model as a whole performs moderately well, and the 18.93 percent proportionate reduction in error is substantial. As with the first model, the variables indicating reversal rates show significant association with the judges' decisions. *Judge's Reversal Rate in All Pro-Defendant Decisions Appealed* and *Judge's Reversal Rate in All Pro-Plaintiff Decisions Appealed* are both statistically significant at the .05 level. *District-wide Reversal Rates in All Pro-Defendant Decisions* is significant at the .01 level, but *District-wide Reversal Rates in All Pro-Plaintiff Decisions* is not significant. The statistically significant results from the second model suggest that judges are influenced by reversal rates among decisions appealed, both their own and those of fellow district judges. The fact that *District-wide Reversal Rates in All Pro-Plaintiff Decisions* is not shown to influence judges' decisions may be related to the fact that many more pro-plaintiff district-court decisions are reversed than pro-defendant ones (see above). That is, circuit-court reversals of pro-plaintiff decisions are so common that increases or decreases in the rate of such reversals are simply not noticed by the judges. However, when it is the judge's own pro-plaintiff decision that is reversed, it does influence the judge. As was also the case with the first model, larger numbers of lawyers on the plaintiff's side are associated with pro-plaintiff decisions.

As discussed earlier, it is plausible that district-court judges might view reversals differently depending on the political affiliations of the members of the appellate panel that reversed the decision. That is, if a pro-defendant decision is reversed by a circuit-court panel with a majority of Democratic judges, the district-court judge who made the decision might view the reversal as motivated by politics. On the other hand, if a pro-defendant decision is reversed by a Republican-dominated circuit-court panel, the reversal is not likely to be perceived as the result of the circuit panel's policy preferences, and the district-court judge might take the reversal more seriously as an indication that the decision was inconsistent with the circuit's legal policy on discrimination. In other words, a reversal by a circuit-court panel that is ideologically sympathetic to the consequences of the district-court decision sends a stronger signal than a reversal by a circuit panel ideologically at odds with the consequences of the district-court decision.

Although certainly not perfect, the majority party on the circuit-court panel is a reasonable indicator of the circuit panel's ideological preferences. Therefore, another version of the reversal rate variable, one focused on the strength of the signal sent by the reversal, was calculated. Reversals that could be perceived as motivated by ideology, those in which a Democrat-dominated circuit panel reverses a pro-defendant district-court decision or a Republican-dominated panel reverses a pro-plaintiff district-court decision, were separated from those reversals not likely to be motivated by ideology, in which a Democrat-dominated circuit panel reverses a pro-plaintiff district-court decision or a Republican-dominated panel reverses a pro-defendant district-court decision. Reversal rates in pro-plaintiff and pro-defendant decisions were calcu-

lated using these adjusted reversal rates. However, unlike the raw reversal rates, the adjusted reversal rates did not show any effect on the judges' decisions.⁴

To recap the results presented in this section, data on the distribution of reversals and appeals among U.S. District Court judges in the District of Columbia (see Table 1) show there is a large amount of variation in the rates of both appeal and reversal across judges, and that judges appointed by Reagan were more likely to have their decisions appealed and more likely to have their decisions reversed, than judges appointed by Clinton. Data also show that part of the explanation for the discrepancy in appeals is that Reagan appointees make more decisions favoring defendants, and those decisions are significantly more likely to be appealed (see Table 2). Pro-plaintiff district-court decisions are significantly more likely to be reversed than pro-defendant decisions, and circuit panels dominated by Democratic appointees are significantly more likely to overturn district-court decisions than circuit panels dominated by Republican appointees (see Table 3).

The most striking results presented concern the reaction of district-court judges to reversals of their own decisions. Analysis indicates that the higher a district judge's reversal rate in pro-plaintiff decisions, the more likely that judge was to make pro-defendant decisions subsequently, and the higher a district judge's reversal rate in pro-defendant decisions, the more likely that judge was to make pro-plaintiff decisions subsequently. This suggests that these district judges do take reversals of their own decisions seriously and react to them, trying to avoid reversals in the future. The fact that district-wide reversal rates also influence judges' decisions suggests that judges also notice and react to reversal trends across the district.

CONCLUSION

This article has discussed the role of reversals in the decision processes of district-court judges. Reversals are an important method by which higher courts communicate with lower courts. If district-court judges view reversal as a signal that the reversed decision diverged from the law as understood by the circuit court, then reversals can perform a valuable function of encouraging uniformity in the way the district-court judges apply the law. In order for reversals to perform this function, however, lower-court judges have to react to the message and try to avoid reversals in the future. There are good theoretical reasons to believe that district-court judges would want to avoid reversal, but little data on whether they do in fact change their decision patterns in response to reversals.

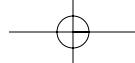
This article has provided some empirical support for the hypothesis that district-court judges do react to reversals by avoiding the type of decision that was reversed. Yet it is important to note the limitations of the data set on which these analyses were

⁴ Another worthwhile question for future research is whether recent reversals are more influential than reversals occurring longer ago.

based. The data consist of only 632 decisions made by eleven judges during the period 1985-2004 in one area of law in one federal judicial district. This is a very narrow base on which to make generalizations. It may be that the main value of this research is to highlight the importance of reversals in maintaining uniformity in judicial decisions and to describe one way of measuring their effect. However, the statistical results are intriguing and are consistent with the very plausible notion that district-court judges dislike and try to avoid reversals by higher courts. If this is the case, reversals appear to be serving the function of maintaining accuracy and uniformity in the way that the district courts implement the law as articulated by the circuit courts. **jsj**

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