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A Different Voice?: African American and Latino Representation in the U.S. Courts of Appeals

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A DIFFERENT VOICE?: AFRICAN AMERICAN AND LATINO REPRESENTATION IN THE U.S. COURTS OF APPEALS

by

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DISSERTATION

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To my parents

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ABSTRACT

The increase in the number of racial and ethnic minority judges in the federal courtroom has led several scholars to examine the merits of descriptive representation. Advocates of descriptive representation argue that it is important, not only because it can translate into positive attitudes towards government, but also because it can lead to more substantive policy outcomes that can benefit under-represented groups in society. Research focusing on the latter of the two merits of descriptive representation, however, has a tendency to treat racial and ethnic minority judges as monolithic groups. It contends that racial and ethnic minority judges, based on their experiences with discrimination, will be more likely than their white colleagues to vote in favor of the claimant across policy issues considered salient to other racial and ethnic minorities. It also argues that these same differences in individual voting behavior will give racial and ethnic minority judges a distinct advantage, as they can crystallize issues of race, enhance perceptions of policy specialization, and threaten panel unanimity to influence panel outcomes. This research is far from conclusive, however. While research focusing on the behavior of

African American judges demonstrates mixed results with regards to both individual voting behavior and panel outcomes (Scherer, 2004-2005; Boyd et al., 2010), others find that Latino judges tend to be more conservative than their white colleagues (Manning, 2004).

This dissertation attempts to reconcile some of these mixed results and unexpected findings by providing one of the first comprehensive examinations of African American and Latino judicial behavior in the U.S. Courts of Appeals. More specifically, it extends the above arguments by focusing on those conditions that can mediate the individual voting behavior of African American and Latino judges and their ability to influence panel outcomes, which includes both panel rulings and majority opinion writing. While the presence of salient policy issues, such as discrimination cases, provides one condition for understanding African American and Latino judicial behavior, this dissertation contends that "claimant effects" or the presence of co-racial and co-ethnic claimants can enhance perceptions of commonality that motivate African American and Latino judges to vote in favor of the claimant as well as influence panel outcomes. By controlling for these judge-claimant relationships, it is possible to not only test whether previous results are due to the exclusion of "claimant effects," but also examine whether theory is applicable to both African American and Latino judges across the same set of data.

To test my argument, this dissertation focuses exclusively on Title VII employment discrimination cases based on race and ethnicity between 2001 and 2009. The data is unique in that it records both the race and ethnicity of the judge and the claimant. The results from this dissertation show that African American and Latino

judges are not monolithic in their individual voting behavior. Although African American judges are more likely than non-Black judges to vote in favor of other co-racial claimants, Latino judges are less likely than non-Latino judges to rule in favor of Latino and non-Latino claimants alike. The results also show that African American and Latino judges are not marginalized in the courtroom, as they can influence both individual voting behavior and panel outcomes. While the presence of an African American judge on a panel increases the probability that a panel will rule in favor of a Black claimant, the presence of a Latino judge has the opposite effect by decreasing the likelihood that both Latino and non-Latino claimants will win their appeal. Finally, the results demonstrate that African American and Latino judges are more likely than their white colleagues to write the majority opinion across Title VII employment discrimination cases. Interestingly, though, the likelihood of writing the majority opinion is not conditioned by the formal role of the presiding position.

Overall, the results from this dissertation have important implications for the relationship between descriptive representation and substantive outcomes. In the U.S. Courts of Appeals, it has been well documented that Title VII employment discrimination claims are difficult to win on appeal. Minority judges, at least African American judges, can help alleviate some of this difficulty by bringing a different voice to the bench. Different from Latino judges, African American judges can influence their panel colleagues and, at the very minimum, moderate the policy preferences of their panel colleagues. By having more opportunities to write the majority opinion, moreover, African American judges can also set the policy agenda as well as change, strike down, or even create new legal guidelines that may lead to more winnable claims in the future.

This dissertation also provides an added dimension to the study of descriptive representation by focusing on the more direct effects that African American and Latino judges can have on the claimants who wish to appeal or defend their case in the intermediary courts. By coming to the bench with a different perspective, African American judges can level the playing field by being directly responsive to other Blacks claimants. This is especially important given that Blacks are over-represented in Title VII employment discrimination claims. Finally, this dissertation concludes by arguing that diversity in the courtroom is a normative good. Even though Latino and African American judges come to the bench with different voices, efforts to make the bench look more like the United States' diverse population remains important for achieving greater inclusion in the political system.

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CHAPTER 1

Introduction

Of the three branches of government, the judicial branch serves as a counter-majoritarian institution that protects the rights of the minority from an overbearing majority. In the United States, the institution of majority rule is central to the political landscape. While those who represent the interests of the majority can use their superior size to determine the policy agenda and pass public policy, those who represent the interests of the minority have much less opportunity to determine political outcomes. James Madison and other delegates at the Constitutional Convention, however, were especially fearful that dominating interests, also known as "factions" or "groups," could potentially take control of government (Hamilton et al., [1788] 1961).[1] Assuming that individuals are motivated by self-interest, the Framers reasoned that factions, representing common passions or interests, could potentially infringe upon the rights and liberties of the minority. In this sense, democracy would be replaced by tyranny of the majority.

Given the potential for dominating interests to emerge, the Framers sought to place important constitutional and legal restrictions on government (Woll, 2011). Following the principle of separation of powers, federal judges maintain autonomous powers where they are called upon to interpret the law and settle disputes. At the same

[1] Madison defined a 'faction' as "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens or to the permanent and aggregate interests of the community" (Hamilton et al., [1788] 1961).

time, the judicial branch also places important constraints on legislative and executive power. Although not explicitly stated in Article III of the Constitution, the power of judicial review allows federal judges to declare actions of the legislative and executive branches invalid or unconstitutional. As Hamilton noted, "it [the judiciary] not only serves as "an excellent barrier" against the encroachments and oppression of the representative body," but it also serves "as an essential safeguard against the effects of the occasional ill humors of society" (Hamilton [1788] 1961, 433, 438).

The independence of the court is central to the ability to make decisions and provide a check on dominating interests. By independence, I refer to the "ability of the courts to perform their duties free of influence or control of other actors" (Law, 2010: 1369). Assuming that individuals are self-interested, the framers feared that judges would be susceptible to bias and pursue their own personal agendas (Ferejohn, 1999). The framers also feared that federal judges would be prone to intimidation from those representing other government institutions and the public (Ferejohn, 1999). By insulating judges from internal and external pressures, however, it was assumed that judges could base their decisions on the facts of the case and legal principles, such as the plain meaning of statutes, the Constitution, the intent of the Framers, and legal precedent, rather than other extra-legal influences (Segal and Spaeth, 2002: 26).[2] In this context, the

[2] Segal and Spaeth (2002), in their discussion of the legal model, define each of these concepts in turn. Plain meaning "applies not only to the language of statutes and constitutions, but also to the words of judicially formulated rules" (53). Moreover, "it holds that judges rest their decisions in significant part of plain meaning of the pertinent language" (53). Legislative and Framer's' intent refers to "construing statutes and the Constitution according to the preferences of those who originally drafted and supported them" (60). While legislative intent refers to the interpretation of statutes, Framers intent involves the

Court is distinct from the other branches of government in that political motivations are not intended to be paramount in decision-making.

To ensure judicial independence, the Framers established a series of institutional mechanisms. According to Article III of the U.S. Constitution, judges are appointed by the president and confirmed by the Senate. By appointing judges rather than electing them, the Framers sought to ensure that the neither the public nor any one branch of government would have complete control over the decision-making of federal judges. Article III of the Constitution also stipulates that judges hold tenure on the basis of good behavior. Over the years, the notion of serving on the basis of good behavior has translated into lifetime tenure for federal judges. In fact, "the standards of impeachment are so high that only 14 judges have been impeached in U.S. history and only 7 have ever been removed from office" (Lowi et al., 2010; Ferejohn, 1999).[3] Finally, Article III mandates sustainable salaries to promote job security and ensure that judges would not be susceptible to other external influences, such as bribery (Ferejohn, 1999). By establishing these institutional mechanisms, the Framers hoped to protect the independence of the judiciary.

The Federal Courts as Counter-Majoritarian Institutions?

Despite the more normative view that judges merely find law through the facts of

---

interpretation of constitutional provisions (60). Finally, precedent, or *stare decisis*, refers to "the adherence to what has been decided" (76).

[3] The difficulty in achieving a two-thirds majority vote in the Senate provides one explanation for these low numbers. As Ferejohn (1999) notes, "majorities of this seize are hart to put together and sustain over time (356-357).

the case and the guidance of legal principles, it has been well established that judges are also important policy makers (Segal and Spaeth, 1993; Rhode and Spaeth, 1976; Rhode, 1972). Through their ability to interpret law, judges can modify, strike-down, and completely change existing legal precedent (Carp, Stidham, and Manning, 2004). The basis for which judges can craft policy is through their ability to select among multiple interpretations of the law. As Birkby (1983) explains:

> Any judge faced with a choice between two or more interpretations and applications of a legislative act, executive order, or constitutional provision must choose among them because the controversy must be decided. And when the judge chooses, his or her interpretation becomes policy for the specific litigants. If the interpretation is accepted by other judges, the judge has made policy for all jurisdictions in which that view prevails (1; see also Carp et al., 2004: 30)

The above conception of the judicial role also focuses on how judges in the federal courts *ought* to act. Assuming that the courts are insulated from both internal and external influences, judges are supposed to make impartial decisions that are based on guiding legal principles and ensure that laws passed by government do not infringe upon the rights of the minority. Contrary to this more normative view, however, a wealth of scholarship from the behaviorist approach demonstrates that judges are motivated by their policy preferences (Segal and Spaeth, 1993; Rhode, 1972; Schubert, 1965; Pritchett, 1948). They argue against the notion that federal judges completely adhere to legal principles, such as Framers' intent, legal precedent, and the Constitution. Instead, federal judges, given the same set of case facts, can use different legal standards to support almost any position (Segal and Spaeth, 1993). Otherwise, judges would always reach the same conclusions, as legal principles would offer a single and correct path.

The conception of judges as policy makers has led many to pose the question, is the judiciary a counter-majoritarian institution (Dahl, 1957; Mishler and Sheehan, 1993, 1996; Barnum, 1985; Norpoth and Segal, 1994; Romero, 2000)? Despite the more normative view that the courts are removed from external influences, a growing body of research finds that federal-court judges tend to be responsive to the will of the majority (Dahl, 1957; Mishler and Sheehan, 1993, 1996; Barnum, 1985). Since the judicial branch lacks enforcement powers, students of the courts contend that federal-court judges must be able to maintain a sense of institutional legitimacy and garner support from both the public and other political actors to ensure the execution of their decisions. Although there are some notable lag effects between public opinion and judicial behavior (Mishler and Sheehan, 1993; but see Norpoth and Segal, 1994), the Supreme Court has been found to be directly responsive to public opinion, even after taking into account the more indirect effects that capture partisan turnover in the Supreme Court (Misher and Sheehan, 1993). Of these justices, ideologically moderate judges are the most responsive to public opinion (Mishler and Sheehan, 1996). This is especially crucial since the justice in the ideological middle can determine the outcome of panel rulings (Martin, Quinn, and Epstein, 2005). In this light, the role of the federal courts, including the Supreme Court, is much different than how the Framers originally intended.

These majoritarian tendencies have been especially harmful for specific social groups in the U.S., including racial and ethnic minorities (Morin, 2005). According to Soltero (2006), "legal systems generally mirror the societies in which they exist, since laws are in essence the rules governing societal norms" (5). Historically, the Supreme Court has sought to selectively incorporate the rights of Blacks and other racial and

ethnic minorities by making gradual changes to Supreme Court precedent. Under the Taney Court, for example, the Supreme Court limited the inclusion of African Americans in the U.S. political system by denying their citizenship, promoting slavery across U.S. territories (*Dredd Scott v. Sandford*, 1857), and establishing the state action doctrine, which held that the 14th Amendment was only applicable to the actions of the federal and state government and not the private sphere (*Civil Rights Cases*, 1883). Following this trend, the Supreme Court also created the principle of "separate but equal," which institutionalized the segregation of Blacks and other racial and ethnic minorities (*Plessey v. Ferguson*, 1896). Although the Court would later reverse "separate but equal" (*Brown v. Board of Education*, 1954; see also *Mendez v. Westminster School District of Orange County*, 1946), its ruling was limited to only schools.

The lack of protection has also affected other racial and ethnic minorities. In comparison to African Americans, Latinos and Asian Americans "were largely considered an anomaly within the black-white legal and societal structure" (Soltero, 2006: 5). During World War II, for example, the Supreme Court held that the federal government could place Japanese U. S. citizens in internment camps to protect the U.S. from the possibility of espionage (*Koramatsu v. U.S.*, 1944). The Supreme Court also denied the land rights of Mexican Americans that were guaranteed under Article 8 of the Treaty of Guadalupe, Hidalgo (*United States v. Sandoval*, 1913; *Botiller v. Dominguez*, 1889). In the *Insular Cases*, the Supreme Court also relegated Puerto Ricans to second-class citizenship by subjecting them to colonial dependency and denying equal representation in the U.S. Congress (Morin, 2005: 47). Finally, even though defendants have a right to be tried by a jury of their peers (*Hernandez v. Texas*, 1954), the Court has

also ruled that prosecutors can dismiss bilingual jurors who can speak both Spanish and English (*Hernandez v. New York*, 1991). Although the ruling would disproportionately impact Latinos, the Court justified its decision by reasoning that bilingual individuals could not adhere to the lower courts' official translation (Morin, 2005: 78-79).

In 1964, Congress passed the Civil Rights Act, which outlawed discrimination on the basis of race, color, religion, sex, or national origin. Although it prohibits unequal treatment in housing, education, public accommodations, and employment, discrimination is a problem that continues to affect the lives of racial and ethnic minorities. In 1992, for example, the Equal Employment Opportunity Commission reported that code phrases were used by employment agencies to screen out women and racial and ethnic minority applicants (Whitby, 1997: 62). In Los Angeles, California, one agency was found to have "discriminated against over thirty-five hundred applicants, many of whom were black" (Whitby, 1997: 62). Also, in 1994, Texaco settled a suit of more than 174 million dollars over informal practices that disproportionately promoted whites over other racial and ethnic minorities. To date, the Texaco suit represents one of the largest settlements in Title VII history (Whitby, 1997: 62-63).

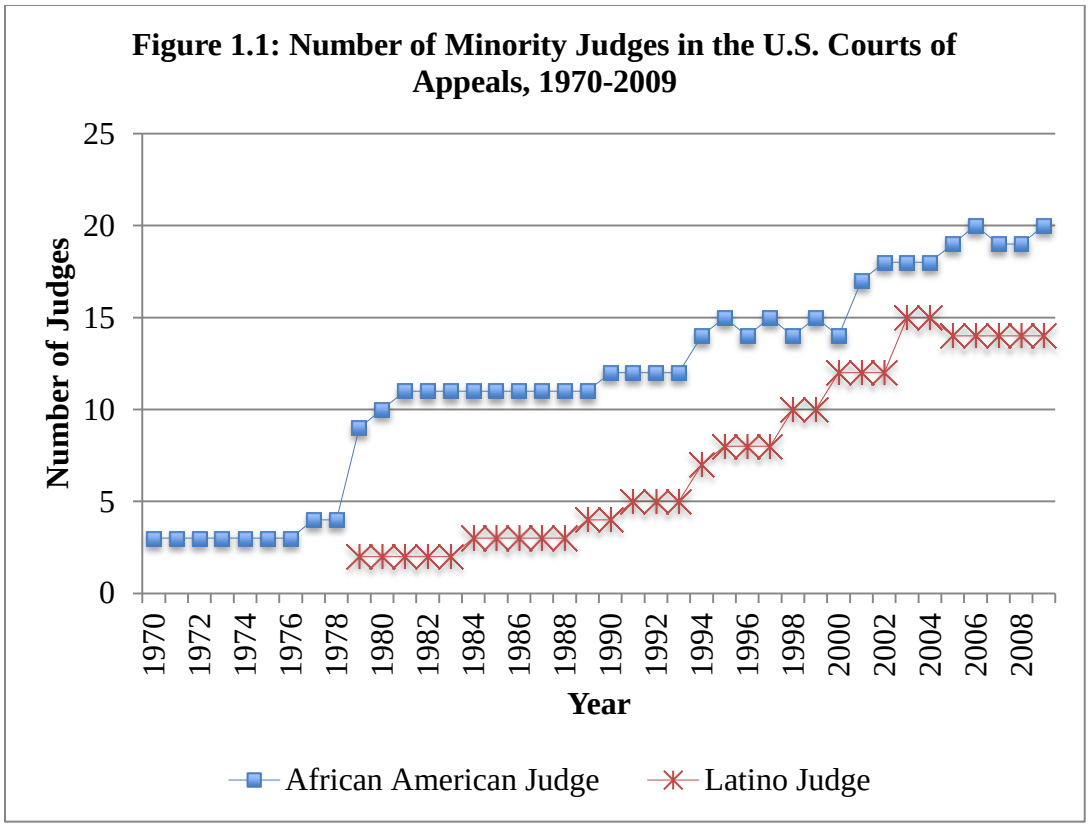
Despite the continuance of discrimination in the United States, the federal courts have made it more difficult to prove discrimination (Selmi, 2000-2001; Selmi, 2011). Since employers do not readily admit to discrimination, employees must, more often than not, resort to using circumstantial evidence. Recognizing this dilemma, the Supreme Court established a burden-shifting test to show that an employer's actions had the *effect* of rather than the *intent* of discrimination (*Griggs v. Duke Power*, 1971). In *Griggs v. Duke Power (1971)*, the Court placed the burden of proof on employers where they were

required to show that their actions were out of "business necessity." Under the tenure of Chief Justice Rehnquist, though, the Supreme Court became increasingly conservative towards employment discrimination claims by making a series of judgments that shifted the burden of proof back to the employee (Selmi, 2011). In *Wards Cove Packing Co. v. Atonio (1989),* for example, the Court maintained that employees must prove that racial imbalances in the workplace have no valid business purpose. In other words, employers could continue to treat their employees differently so long as they had a legitimate business reason (see also *Price Waterhouse and Hopkins*, 1989). Although the Civil Rights Act of 1991 would ultimately reverse several of the Supreme Court's decisions by providing added protections for employees, racial and ethnic minorities have seldom been successful at proving their discrimination claims (Selmi 2000-2001, 2011).

Debating the Merits of Descriptive Representation

The history of the federal courts as it relates to issues of race and ethnicity suggests that the judiciary does not sufficiently protect the rights of racial and ethnic minorities. Consequently, former presidential administrations, including those under Presidents Carter and Clinton, have sought to diversify the racial and ethnic composition of the federal courts (Goldman, 1997). Figure 1.1 shows the increase in the number of African American and Latino judges in the U.S. Courts of Appeals between 1970 and 2009. Throughout much of the federal courts' history, the composition of the U.S. Court of Appeals consisted of mainly white males (Goldman, 1997). Prior to the Carter administration, only two African Americans occupied the appellate-court bench without any Latinos in the intermediary courts. By 1980, this number increased to 4 and 9, respectively. Finally, in 2009, African American and Latino jurists represented 7.3

percent (20) and 5.1 percent (14) of all sitting judges in the U.S. Courts of Appeals (Federal Judicial Center, n. d.).[4] While the federal courts have yet to achieve levels that reflect the U.S.'s diverse population, there have been clear improvements in the racial and ethnic composition of the federal bench.



The increase in the number of judges has sparked much debate over the merits of descriptive representation (Goldman 1978-1979). According to Pitkin (1967), descriptive representation occurs when office holders in political institutions and their constituents share similar social and demographic characteristics. Those who argue against

[4] Currently, there are 275 seats in the U.S. Courts of Appeals.

diversifying the courts for the sake of diversity contend that the appointment process should be based on merit alone and emphasize qualities, such as integrity and ethics (Abraham, 1999; Epstein and Segal, 2005).[5] Opponents also argue that an exclusive focus on racial and ethnic characteristics can introduce biases into judicial decision-making, promote reverse discrimination that negatively impacts the appointment of qualified whites, and diminish the legitimacy of the judiciary (Goldman, 1978-1979). While having a color-blind society is certainly ideal, the above arguments are flawed in many respects (Goldman, 1978-1979). First, they ignore the continuing role of discrimination and the lack of democratic inclusion in the U.S. political system (Goldman, 1978-1979). Second, they neglect the main objective of diversification, which is to create a federal bench that is fairly representative of the U.S. population and not one that is over-represented by any one particular group (Goldman, 1978-1979). Goldman (1978-1979) also contends that it is a disservice to assume that minority judges are not qualified for a position on the bench since presidents are already highly selective when it comes to choosing their judicial candidates (Goldman, 1978-1979). Finally, it is naïve to think that the selection process is solely based on merit, as the partisanship and ideology of judicial nominees plays an inherent role in the appointment of federal judges.

By contrast, proponents of diversity in the courtroom argue that the appointment of racial and ethnic minorities is a normative good. First, advocates of descriptive representation suggest that a diverse courtroom may lead to symbolic representation or "intangible psychological benefits" (e.g. Garcia and Sanchez, 2008), such as trust in

[5] A more extreme version argues that affirmative action can lead to racial classifications that are more reminiscent of authoritarian regimes (Goldman, 1978-1979).

government, political efficacy, and feelings of inclusion in the U.S. political system (Mansbridge, 1999; Gay, 2002; Howell and Fagan, 1988; Vanderleeuw and Utter, 1993; Bobo and Gilliam, 1999; Banduchi, Donovan, and Karp, 2005; Sanchez and Morin, 2011; but also see Gay, 2002). The ability to create positive attitudes among under-represented groups is especially important, as African Americans and Latinos are more skeptical of the notion they receive equal treatment, are less trusting of court authorities, and believe courtroom decisions are influenced by political considerations (Brooks and Jeon-Slaughter, 2001; Rottman, 2000: 6). By simply being in positions of power, it is assumed that racial and ethnic minorities can improve these negative perceptions by acting as role models and compensating for historical and continued injustices (Phillips, 1998: 228; see also Mansbridge, 1999).

Second, proponents of diversity in the courtroom can lead to important substantive policy outcomes. More specifically, they argue that racial and ethnic minorities can bring different perspectives to the bench, such as sense of fair rule, which can compensate for past and continued injustices (Goldman, 1978-1979: 494). Indeed, more recent presidents, including Presidents Clinton and George W. Bush, have been fairly explicit about the importance of diversity in the federal courtroom (Goldman and Saronson 1994-1995; Segal 2000; Clinton 1996) and have highlighted the role of judges' personal experiences as one factor in their decision to nominate judges (Segal 2000; see also Clinton 1996; Davis 1989: 21). Taken together, the positive merits associated with racial and ethnic diversity are said to contribute to the perception that the judicial branch is a legitimate institution (Walker and Barrow, 1985: 597; Mansbridge, 1999: 651; Scherer and Curry, 2010).

Scope and Purpose of Dissertation

This dissertation enters into the above debate by focusing on the latter of the two merits of descriptive representation: substantive policy outcomes. Focusing on Title VII employment discrimination claims based on race and ethnicity, it provides one of the first comprehensive studies of African American and Latino judicial behavior in the U.S. Courts of Appeals.[6] In the lower federal courts, previous work has a tendency to analyze a single minority group across a set of policy issues, such as African American judges across search and seizure cases (e.g. Scherer, 2004-2005) and Latino judges across employment discrimination cases (e.g. Manning, 2004). Although this research is certainly fruitful for understanding the role of descriptive representation in the courtroom, the inability to control for both groups across the same data has made it difficult to examine how racial and ethnic minority judges behave relative to their white colleagues on the bench and to one another. By controlling for both the race and ethnicity of judges, therefore, this dissertation is able to test whether theory, which has a tendency to assume that minority judges are monolithic in their behavior, is applicable to both African American and Latino judges across the same set of data.

Overall, the appellate courts provide an excellent opportunity to examine the behavior of African American and Latino judges. First, appellate-court judges are considered to be important policy makers where they "are called upon to monitor the performance of federal district courts and agencies and to supervise their application and

[6] According to Baum (1997), judicial behavior is "what judges do as judges, leaving aside other activities such as speech making and presidential advising" (2). The definition is useful because it focuses on decision-making on judges across different forms of participation within the courts, such as voting on the merits, taking positions during conference, and selecting the majority opinion writer just to name a few

interpretation of national and state laws" (Carp, Stidham, and Manning, 2004: 39-40). Second, the appellate courts are divided into 12 regional circuits, including the Appeals Court for the District of Columbia, which allows for greater diversity within racial and ethnic groups. Finally, the nature of the collegial courts provides opportunities to examine how racial and ethnic minority judges interact with their panel colleagues. Random panel assignments, moreover, ensure that racial and ethnic minorities interact with different colleagues within their circuit.

Given this institutional setting, this dissertation asks a series of questions regarding the behavior of African American and Latino judges at the individual and panel level of analysis. It begins by focusing on the individual voting behavior African American and Latino judges. In particular, it asks whether African Americana and Latino jurists are more likely than white judges to rule in favor of the claimant? Following a growing number of studies that account for the social composition of appellate-court panels (Farhang and Wawro, 2010, 2004; see also Kastellec, forthcoming; Boyd et al., 2010; Cox and Miles, 2008), it also asks whether African American and Latino jurists continue to vote differently than their white colleagues when they sit on majority-white panels? By focusing on individual voting behavior and acknowledging the collegial nature of the appellate-courts, it is possible to test whether theory is applicable to both racial and ethnicity minorities across different panel compositions.

Second, and following research that focuses on panel effects and judicial influence in the collegial courts (Kastellec, forthcoming, 2011; Boyd et al., 2010; Farhang and Wawro, 2010, 2004; see Cox and Miles, 2008), this dissertation moves beyond individual voting behavior by asking whether or not African American and

Latino judges can influence final panel outcomes? In other words, can the presence of an African American or Latino judge on a panel increase the probability that an employee will win their claim? Given that appellate-court judges sit on rotating, three-member panels, the institution of majority rule stipulates that at least two judges must reach a consensus before filing a panel decision. In this regard, the ability to form majority coalitions is especially important. While those in the majority can write the majority opinion and influence policy outcomes, those who disagree with the preferences of the majority can either choose to file a separate dissenting opinion or do nothing.

Finally, this dissertation is one of the first studies to examine the relationship between race and ethnicity and majority-opinion writing. More specifically, it asks whether African American and Latino judges are more likely than their white colleagues to write the majority opinion? If so, does the assignment of the majority opinion depend on the formal role of the presiding judge who has the power to assign the majority opinion? Interestingly, little research has paid attention to those factors that explain the presiding judge's decision to assign the majority opinion in the U.S. Courts of Appeals. Still, the majority opinion is at the core of the policy-making process (Segal and Spaeth, 2002). Not only does it represent the ability to shape the policy agenda, but it also offers judges the opportunity to promote the organization of the court by selecting judges who specialize in distinct areas of the law (Maltzman and Wahlbeck, 2004; see also Atkins, 1974).

African American and Latino Judicial Behavior

To address these research questions, I rely on two overarching theories: descriptive representation and small group theory. While the theory of descriptive

representation is important for understanding the individual voting behavior racial and ethnic minority judges, small-group theory provides a framework for explaining how minority judges can influence their panel colleagues on the collegial courts. This dissertation also contributes to our understanding of African American and Latino judicial behavior by emphasizing the role of claimant effects or co-racial and co-ethnic cues that can mediate the behavior of judges. In doing so, it is possible to examine those factors that condition the behavior of African American and Latino judges. In what follows, I provide a description of each theory.

Descriptive Representation

To explain the individual voting behavior of African American and Latino judges, students of the courts have relied on the theory of descriptive representation. The theory of descriptive representation contends that racial and ethnic minorities and women bring with them "different points of view" to the bench, such as a sense of fair rule and more equitable justice (Goldman, 1978-1979: 494; Songer et al., 1994; Walker and Barrow: 1985). However, these "different points of view" are not based on ideology, but rather on experiences with discrimination (Goldman 1978-1979: 494; Scherer, 2004-2005).[7] For example, research focusing on judges' career paths suggests that minorities are not afforded the same opportunities as their white counterparts (Walker and Barrow, 1985), as they are more likely to graduate from public law schools, hold government positions, and earn less money throughout their careers (Goldman and Saronson, 1994-1995;

[7] In 1993, for example, an African American judge was arrested on suspicion of using a stolen credit card at an upscale shopping mall in New Jersey. Despite showing his identification and adamantly denying the charges, the police took him into custody where he was chained to a wall for three and a half hours (Margolick, 1994).

Slotnick, 1983-1984). Surveys of racial and ethnic minorities in the law profession also suggest that African Americans and Latinos are more likely than their white colleagues to perceive, experience, or even witness discrimination and in the U.S. legal and judicial systems (Chavez, 2011; Cruz and Molina, 2009; Carter, 1999; Lyles, 1997). Finally, these attitudes are reinforced by more qualitative evidence that acknowledges the role of discrimination in judicial decision-making (Davis, 1989; Higginbotham, 1993; Sotomayor, 2002; Tobias, 1990). Thus, racial and ethnic minority judges will not only come to the bench with different life experiences, but it is argued that these same life experiences will also translate into divergence in voting behavior between minority and white judges.

The theory of descriptive representation also posits that divergence in voting behavior between minority and non-minority jurists depends on the presence of salient policy issues, such as civil rights and criminal cases, that are important to racial and ethnic minorities (Goldman, 1978-1979; Songer et al., 1994; Walker and Barrow, 1985). Central to this conditional aspect of behavior is the role of discrimination. Thus, racial and ethnic minority judges will have a tendency to vote in favor of the claimant across policy issues that either deal directly with discrimination or policy issues that can have a negative impact on racial and ethnic minorities more broadly. For example, Goldman (1978-1979) reasons that minorities may be particularly sensitive to issues dealing with racial and sexual discrimination. Other policy issues may also include criminal or even immigration policies. Across all other non-salient policy areas, therefore, one would expect to find no significant differences in voting behavior between minority and white judges.

Small Group Theory

While the descriptive representation model provides theoretical expectations with regards to the direction of individual judge votes, it does not consider the role of panel effects or "intra-panel dynamics of circuit-court judges who seek to persuade or otherwise influence their colleagues" (Cross, 2007: 148). At first glance, there is little reason to expect that minority judges will be able to influence their panel colleagues. Assuming that judges vote according to their most preferred policy outcome, the "racialized institutions model" holds that "racially polarized political contexts provide few potential coalition members since policy preferences are reinforced by racial cleavages, and not by broader liberal or conservative ideologies" (Preuhs 2006: 587; see also Hawksworth, 2003). For example, Hawkesworth (2003) describes how women of color in the U.S. Congress were silenced and prevented from claiming credit for their efforts, even by members of their own party (537). Thus, racial and ethnic minorities are forced to work within different institutional constraints and deal with inter-personal relations that ultimately prevent racial and ethnic minorities from achieving their goals (Hawkesworth, 2003).

In the U.S. Courts of Appeals, this racialized context is reinforced by the under-representation of racial and ethnic minority judges and low probability that two minority judges will ever sit on the same panel (Farhang and Wawro, 2004). In the U.S. Courts of Appeals, for example, whites make up the majority of appellate-court judge, followed by African American and Latino judges, respectively. Among the 275 seats in the appellate-courts, white judges currently represent 83 percent of all sitting judges. African American and Latino jurists, however, represent less than 10 percent for each group. Random panel

assignments, coupled with the small number of minority judges per circuit, also limit the probability of majority-minority panels. For instance, Farhang and Wawro (2004) note that the probability of having at least two minority judges serving together on the same panel is less than 3 percent.[8] Consequently, minority judges, who represent polarizing interests, are limited in their ability to influence panel outcomes and write the majority opinion.

Contrary to this conventional wisdom, however, a bourgeoning line of research contends that these same differences in behavior can also place African American and Latino judges at a distinct advantage –not only in terms of panel outcomes, but also in the context of majority opinion assignments (Kastellec, forthcoming; Boyd et al., 2010; Cox and Miles, 2008; Farhang and Wawro, 2010, 2004). Following research that concentrates on the social psychology of judges, small group theory holds that how judges relate to one another can have a significant influence other judges' behavior (Ulmer, 1971). Different from models that focus on strategic bargaining (e.g. Epstein and Knight, 1998), however, it relaxes the assumption that judges are single-minded seekers of policy by assuming that judges pursue policy and non-policy goals alike (Baum, 1997). For example, a designate judge, who works in a temporary capacity, may wish to defer her judgment to a permanent member of the appellate courts in order to achieve greater collegial relations (Collins and Martinek, 2011). Similarly, appellate-court judges may

[8] This calculation is based on a 15-member circuit with 2 minority judges. Farhang and Wawro (2004) contend that this level of diversity is representative of the distribution of racial and ethnic minorities across appellate-court circuits.

also wish to moderate or completely change their vote in order to achieve other non-policy goals.

Based on this key assumption, racial and ethnic minorities, who represent polarizing interests, may not only be able to influence their panel colleagues, but also increase the likelihood of writing the majority opinion in Title VII employment discrimination cases. There are three reasons to expect these two outcomes. First, African American and Latino judges can improve the quality of deliberation by drawing on their personal experiences with discrimination and crystallizing issues of race and ethnicity among their panel colleagues (Mansbridge, 1999; see also Carp and Stidham, 1991: 176; Cross 2007: 154-155; Edwards, 2003: 1656-1661; Sunstein et al., 2006: 73). For example, research focusing on Congress demonstrates that women of color can persuade other members of Congress across salient policy issues (Mansbridge, 1999) even though racial and ethnic minorities must overcome racialized contexts that prevent them from achieving their goals (Hawkesworth, 2003).

Second, racial and ethnic minority judges can influence their panel colleagues by their mere presence. Following research that focuses on policy specialization (Atkins, 1974), white judges may perceive African American and Latino jurists to be more credible or expert across policy issues considered to be salient to racial and ethnic minorities. For example, research focusing on jury deliberations demonstrates that white jurors sitting on racially diverse panels tend to be more lenient towards Black defendants, cite more case facts, make fewer factual errors, and appeal directly to Black jurors in the group to validate their concerns of racism (Sommers, 2006). Perceptions of policy specialization may also be reinforced by negative stereotypes. For example, surveys of

Latinos in the legal profession find that Latino lawyers possess feelings of tokenism and perceive themselves to be subject to "ethnic oriented roles," such as translation work and immigration law (Cruz and Molina, 2009: 42; see also Chavez, 2011: 67-69). In the context of the collegial courts, therefore, minority judges not only have the potential to crystallize issues of race and ethnicity, but also cause white-judges to defer their judgment to minority judges when policy issues are salient to racial and ethnic minorities.

Finally, racial and ethnic minority judges can influence their panel colleagues by threatening panel unanimity. According to this view, judges prefer panel unanimity to split-decisions. Not only is panel consensus important for establishing a unified front on the interpretation of law, but it also provides a sense of institutional legitimacy, which is necessary for the execution of court orders by other governmental entities (Farhang and Wawro. 2004). Given the importance of panel consensus, therefore, African American and Latino judges can improve their own bargaining leverage by threatening to dissent from the majority panel. Although the rate of dissent is a relatively rare event (Farhang and Wawro, 2004), research indicates that minority judges have tendency to diverge from the majority coalition. Not only are they more likely to vote differently than their white colleagues on the bench (Scherer, 2004-2005; Gottschall, 1982-1983; Collins and Moyer, 2008; Manning, 2004), but research also indicates that they are also more likely to write separate dissenting opinions apart from the majority (Hettinger, Lindquist, and Martinek, 2003, 2004ab). Ultimately, this track record may improve upon their ability to bargain when they are at odds with the panel majority.

Claimant Effects

Finally, this dissertation contends that both individual voting behavior and the ability to influence panel outcomes may be conditioned by the presence of co-ethnic and co-racial claimants. Despite expectations that racial and ethnic minorities will vote differently than their white colleagues, separate analyses demonstrate mixed results with regards to African American jurists (Boyd et al., 2010; Scherer, 2004-2005) and even more conservative behavior among Latino judges (e.g. Manning, 2004). For example, studies find that African American and Latino judges in the federal courts are no more likely than white judges to rule in favor of Black policy issues and employment discrimination cases (Segal, 2000: 174; Walker and Barrow, 1985; Farhang and Wawro, 2004). Still, others find that African American judges are more likely to rule in favor of the defendant in criminal cases (Gottschall 1983-1984; Scherer, 2004-2005; Collins and Moyer, 2008). These mixed findings are also supported by research that focuses on panel effects, which demonstrates that African American judges sitting on majority-white panels can influence outcomes that favor the claimant across affirmative action claims but not employment discrimination claims more broadly (e.g. Kastellec, forthcoming; Farhang and Wawro, 2004. Different from theoretical expectations, however, Latino judges are less likely to rule in favor of the defendant in criminal cases and civil rights cases more generally (Manning, 2004). In all, the findings suggest that the theory of descriptive representation may not necessarily explain more favorable decisions among under-represented groups in the federal courts.

This dissertation attempts to reconcile these different outcomes by focusing on "claimant effects" or the conditional role that co-racial and co-ethnic claimants might

have on the behavior of African American and Latino judges. In comparison to the different policy issues considered salient to racial and ethnic minorities (e.g. Songer, 1994; Boyd et al., 2010), studies focusing on the voting behavior of African American and Latino judges in the federal courts have yet to control for the presence of race and ethnicity of the claimant. By and large this is because the *Federal Reporter* and *Federal Supplement,* which are the primary sources for appellate-court opinions, tend to exclude the background characteristics of the claimants when they are not pertinent to the facts of the case. Consequently, our knowledge of these judge-claimant relationships has been relegated to other levels of the federal government, such as the municipal and state courts (Steffensmeier and Britt, 2001; Holmes et al., 1993; Spohn, 1990; Welch, Combs, and Gruhl, 1988; Uhlman, 1978).

The theory of claimant effects is based on the assumption that judges rarely have complete information about cases (Steffensmeir and Demuth 2001: 147). To reduce uncertainty, judges rely on a number of different sources for their information, ranging from the facts of the case and legal precedent to amicus curiae briefs and the use of case law by the appealing and defending parties. Additionally, judges may also rely on the appellants' background characteristics to facilitate their rulings, including the race, gender, and social class of the appellant (Steffensmeier and Demuth, 2001: 145). Acting as informational cues, the presence of a claimant with similar characteristics may trigger feelings of commonality and highlight common experiences with discrimination (Steffensmeier and Demuth, 2001: 145). Based on these similarities, I expect two important outcomes. In the context of individual voting behavior, I expect African American and Latino judges to be more likely to rule in favor of the claimant in Title VII

employment discrimination cases. In doing so, descriptive representatives can "level the playing field" and ensure that racial and ethnic minorities do not receive harsher treatment than they might deserve (Welch, Combs, and Gruhl, 1988: 127). In the context of panel effects, the presence of co-racial and co-ethnic claimants can also lead to more favorable outcomes, as the presence of a Black or Latino claimant can serve to motivate minority judges to improve the quality of deliberation and reinforce cues of policy specialization.

Outline of Dissertation

This dissertation focuses on the judicial behavior of African American and Latino judges in the U.S. Courts of Appeals. Chapter Two begins the analysis by examining the individual voting behavior of Latino and African American judges. Moreover, it adds to the analysis by taking into account the social composition of panels. Following theoretical expectations, I contend that racial and ethnic minorities will bring different points of view to the bench and that individual voting behavior will continue to hold after taking into consideration the social composition of the panel. This chapter finds that African American judges are more likely than their non-Black colleagues to rule in favor of the claimant, especially when co-racial claimants are present. Latino judges, however, behave much differently. Although they are less likely than non-Latino judges to rule in favor the claimant, the results also demonstrate that this less-than favorable behavior applies to both Latino and non-Latino claimants alike. Finally, this chapter finds that the social composition of the panel plays an important role in behavior. While African American and Latino judges continue to demonstrate important differences in their

individual voting behavior, white judges sitting on racially and ethnically diverse panels are likely to conform to the preferences of their African American and Latino colleagues.

Chapter Three builds on the previous chapter by focusing on panel effects, or the extent to which African American and Latino judges can influence panel outcomes. As judges who sit on three-member panels, this chapter tests the argument that African American and Latino judges will be able to influence their panel colleagues when a co-racial and a co-ethnic claimant is present. This chapter finds that the presence of an African American judge on a panel increases the probability that a Black claimant will win their claim of discrimination. Different from racially diverse panels, however, the presence of a Latino judges decreases the likelihood that a panel will rule in favor of both Latinos and non-Latino claimants

Chapter Four focuses on majority opinion writing. In this chapter, I contend that minority judges hold a distinct advantage over their panel colleagues, as the presiding judge may wish to promote non-policy goals, such as unanimity, specialization, and credibility. This chapter finds support for my argument. Specifically, the presiding judge is more likely to assign the majority opinion to African American judges, but not for Latino judges. However, important differences emerge when non-presiding, Latino judges are compared to non-presiding, non-Latino judges. The results also demonstrate that the decision to select the majority opinion writer is not conditioned by the formal role of the presiding judges. In fact, the results demonstrate that when African American and Latino judges preside over a case, they are no more likely than their white colleagues to write the majority opinion. In all the findings have important implications for racially

diverse institutions and the substantive representation of interests for racial and ethnic communities.

Chapter Five is the concluding chapter and returns to the more normative debate that focuses on the merits of descriptive representation. It offers a summary of the main findings as well as explanations for differences between African American and Latino judicial behavior. Further, it discusses the implications of this research by focusing on substantive policy outcomes and the more direct impact that decisions can have on African American and Latino claimants. Although this dissertation provides one of the first comprehensive studies of African American and Latino judicial behavior, it maintains that there is room for improvement and offers some suggestions for future research. Finally, the chapter offers some concluding remarks with respect to both diversity and future appointments to the federal judiciary.

CHAPTER 2

Claimant Cues and the Individual Voting Behavior of African American and Latino Judges

> *I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life ~Justice Sonia Sotomayor*

In 2009, President Obama appointed Sonia Sotomayor, the first Latina to the Supreme Court. Obama's appointment not only reflected a growing Latino population in the United States, but his decision to make the Court look more like the United States' electorate also spoke of a much broader trend to diversify the lower federal courts.[1] Prior to the Carter administration, only seven African Americans and three Latinos occupied the lower federal courts. By 1980, this number increased to 39 and 19, respectively. Today, African American and Latino jurists represent 9.4 percent (120) and 6.4 percent (77) of all sitting judges (Federal Judicial Center, n. d.). While the federal courts have yet to achieve levels that reflect the U.S.'s diverse population, there have been clear improvements in the federal benches' racial and ethnic composition.

The growing number of racial and ethnic minorities in the federal courts has led to a number of studies that have focused on the voting behavior of African American (e.g. Gottschall, 1983-1984; Scherer, 2004-2005; Segal, 2000; Songer, Davis, and Haire, 1994; Walker and Barrow, 1985) and, to a much lesser extent, Latino jurists in the federal courts (Manning, 2004).[9] Our understanding of African American and Latino judicial

[9] According to Baum (1997), judicial behavior is "what judges do as judges, leaving aside other activities such as speech making and presidential advising" (2).

behavior is far from conclusive, however. Despite expectations that racial and ethnic minorities will vote differently than their white colleagues, separate analyses have demonstrated mixed results and, in some cases, more conservative behavior among minority jurists. Perhaps one reason for these results is that they have failed to account for "claimant effects" or the conditional role that co-racial and co-ethnic claimants might have on the behavior of African American and Latino judges. By and large this is because the *Federal Reporter* and *Federal Supplement,* which are the primary sources for appellate-court opinions, tend to exclude the background characteristics of the claimants. Consequently, our knowledge of these judge-claimant relationships has been relegated to other levels of the federal government, such as the municipal and state courts (Steffensmeier and Britt, 2001; Holmes, Hosch, Daudistel, Perez, and Graves, 1993; Spohn, 1990; Welch, Combs, and Gruhl, 1988; Uhlman, 1978).

The purpose of this chapter is to examine the individual voting behavior of African American and Latino jurists in the U.S. Courts of Appeals. In doing so, this analysis serves as one of the first studies to test whether voting behavior is consistent across multiple racial and ethnic groups. Since voting behavior in the collegial courts rarely takes place in a vacuum (Collins and Martinek, 2011), it also extends the analysis by examining African American and Latino voting behavior across majority-white and majority-minority panels. Based on previous experiences with discrimination, this chapter contends that African American and Latino judges will be more likely than their white colleagues to vote in favor of the claimant across issues considered salient to racial and ethnic minorities (Goldman, 1978-1979). At the same time, I also expect the presence of co-racial and co-ethnic claimants to trigger feelings of commonality and condition

African American and Latino judges to vote in favor of other Black and Latino claimants (Steffensmeier and Britt, 2001). Focusing on the U.S. Courts of Appeals between 2001 and 2009, I rely on an original dataset to analyze the voting behavior of appellate court judges across Title VII employment discrimination claims based on race and ethnicity. This dataset is unique in that it records the race and ethnicity of both judges and claimants. Subsequently, it is possible to analyze how African Americana and Latino judges behave towards claimants with similar racial and ethnic backgrounds

This chapter demonstrates that minority judges are not monolithic in their voting behavior. The results demonstrate that while African American judges are more likely than non-Black judges to rule in favor of the claimant, this more favorable behavior is largely conditioned by the presence of co-racial cues. Latinos judges, however, demonstrate much different behavior relative to their white colleagues, as they are less likely to vote in favor of claimants more generally. These differences in behavior also continue to hold once the social composition of the panel is taken into account. In all, the findings not only have important implications for substantive policy outcomes affecting Title VII discrimination claims, but they also provide an added dimension to the study of descriptive representation by focusing on the direct consequences that judges' decisions can have on appellants.

Background

It has been well established that federal-court judges are policy makers whose decisions can have an important impact on the development of law (Rhode and Spaeth, 1976; Segal and Spaeth, 1993, 2002). In the U.S. Courts of Appeals, for example, federal judges provide an important "error correction" function where they "are called upon to

monitor the performance of federal district courts and agencies and to supervise their application and interpretation of national and state laws" (Carp, Stidham, and Manning, 2004: 39-40). The power to monitor the lower courts and federal agencies, moreover, can be far reaching, as they are organized into 12 regional circuits, including the Appeals Court for the District of Columbia, that cross both state and territorial lines, such as Puerto Rico and Guam. According to Cross (2007), when circuit courts disagree, it gives reason for the Supreme Court to settle disputes and create uniformity. When circuit courts agree, however, the Courts of Appeals have the power to create national law (Cross, 2007: 2).

Given the importance of federal judges in these policy-making institutions, scholars have sought to explain their behavior for some time. According to Baum (1997), judicial behavior is "what judges do as judges, leaving aside other activities such as speech making and presidential advising" (2). Perhaps the most prominent explanation of judicial behavior is the attitudinal model. The attitudinal model holds that the "judges decide disputes in light of facts of the case vis-à-vis the ideological attitudes and values of the justices" (Segal and Spaeth, 2002: 86). Thus, judges behave according to their most sincere preferences by "supporting the case outcomes and doctrines they most prefer" (Baum, 1997: 90). In other words, "conservative judges vote the way they do because they are conservative and liberal judges vote they way they do because they are liberal" (Segal and Spaeth, 2002: 86). Support for the attitudinal model has been well documented, especially in its ability to predict the voting behavior of U.S. Courts of Appeals judges (Segal and Spaeth 1993, 2002). In more recent years, it has also been utilized to explain Appeals Court decisions to reverse lower court rulings (Hettinger et

al., 2006) and write separate dissenting opinions, apart from the majority (Hettinger et al., 2004a).

Scholars have also examined the role of background characteristics. Accordingly, these studies reason that personal experiences can have an important and influential impact on judges' behavior. Proponents of the theory argue, "socializing experiences stimulate the development of certain attitudes and values or even conceptions of the judicial role" (Goldman, 1978-1979: 374). The study of background characteristics has been met with some criticism, however. Specifically, critics argue that background characteristics are often mediated by ideological attitudes. Since attitudes account for the culmination of life's experiences, attitudes serve as more proximate cause of judicial behavior (see Tate, 1981). According to this perspective, therefore, background characteristics, such as career and educational experiences, should account for little variation in judicial behavior.

Nevertheless, studies demonstrate that background characteristics can significantly influence judges' behavior, even after controlling for ideological attitudes. For example, Tate (1981) shows that the prestige of judges' educational backgrounds can have an important effect on the behavior of judges towards economic policies. Tate (1981) also demonstrates that career backgrounds, such as experiences with being a former prosecutor or judge, can have an important influence on judicial behavior. For example, Tate (1981) finds that former prosecutors are more likely to rule against the claimant in civil liberty claims than those involved in private practice. Regional influences are also important, as judges born in the South tend to be more conservative than judges from other regions of the U.S. (Songer and Davis, 1990). Finally, judges who

belong to older age cohorts are more likely to rule in favor of the elderly in age discrimination cases (Manning, Carol, and Carp, 2004).

Descriptive Representation in the Courts

In more recent years, students of the courts have added to the "background" literature by examining the judicial behavior of descriptive representatives. According to Pitkin (1967), descriptive representation occurs when office holders in political institutions and their constituents share similar social and demographic characteristics. While the concept of descriptive representation has been previously applied to judges with particular religious (e.g. Catholic, Jewish, Protestant) and national origin backgrounds (e.g. Jewish, Italian), a more contemporary view of descriptive representation focuses on the "representation of historically disadvantaged groups by members of those groups" (Dovi, 2007: 27). Understood in a more restrictive sense, therefore, scholars of descriptive representation have focused on racial and ethnic minorities, including African Americans, Latinos, Asian Americans, and women.

Advocates of descriptive representation suggest that a diverse courtroom is important for two reasons. First, it may lead to symbolic representation or "intangible psychological benefits," such as perceptions of trust among under-represented groups (e.g. Garcia and Sanchez, 2008). This is important, as African Americans and Latinos are more skeptical of the notion they receive equal treatment, are less trusting of court authorities, and believe courtroom decisions are influenced by political considerations (Brooks and Jeon-Slaughter, 2001; Rottman, 2000: 6). By simply being in positions of power, it is assumed that racial and ethnic minorities can improve these negative perceptions by acting as role models and compensating for historical and continued

injustices (Phillips, 1998: 228; see also Mansbridge, 1999). These expectations, moreover, are shared among judges themselves, as African American judges believe descriptive representation to be important for building a sense of trust towards the judiciary (Smith, 1983). In turn, the presence of a diverse judiciary that "looks like America" is said to contribute to the perception that the judicial branch is a legitimate institution (Walker and Barrow, 1985: 597).

Second, descriptive representation may translate into important substantive or policy-oriented outcomes. According to this view, racial and ethnic minorities and women bring with them "different points of view" or "certain qualities of the heart and mind" to the bench, such as a sense of fair rule and more equitable justice (Goldman, 1978-1979: 494; Songer et al., 1994; Walker and Barrow, 1985).[10] However, these

[10] Surveys of African American and Latinos in the law profession provide further evidence to support the contention that behavior is motivated by perceptions of discrimination. For example, over 90 percent of African American lawyers believe that racial bias exists in the justice system and that racism in the justice system is the same or greater than other segments of society (Carter, 1999). These attitudes are also shared among African American judges. In comparison to 83 percent of white judges, for example, only 18 percent of Blacks share the belief that Black litigants are treated fairly in the justice system (Lyles, 1997: 237). Perceptions of discrimination, moreover, are reinforced by two-thirds of lawyers who say they have personally witnessed racial bias in the legal system over the past three years (Carter, 1999).

Similarly, a nation-wide survey of Latino lawyers demonstrates that 53 percent of respondents have had experiences with discrimination (Chavez, 2011). Latinas in the legal profession also maintain the belief that they are subject to tokenism, glass ceiling effects, and subordination by their colleagues (Cruz and Molina, 2009). Similarly, perceptions of more systemic discrimination remain high among Latinos in the legal profession. For example, 91 percent of Latinos say that they believe racial prejudice is moderate to

"different points of view" are not based on ideology, but rather on experiences with discrimination (Goldman 1978-1979: 494; Scherer, 2004-2005).[11] Research focusing on judges' career paths, for example, suggests that minorities are not afforded the same opportunities as their white counterparts (Walker and Barrow, 1985), as they are more likely to graduate from public law schools, hold government positions, and earn less money throughout their careers (Goldman and Saronson, 1994-1995; Slotnick, 1983-1984). Thus, racial and ethnic minority judges will not only come to the bench with different life experiences, but it is argued that these same life experiences will also translate into divergence in voting behavior between minority and white judges.

The argument that experiences with discrimination motivate voting behavior is further supported by the oral testimony of African American, Latino, and female jurists. For example, Judge Judith Kaye of the New York Court of Appeals stated, "After a lifetime of different experiences and a substantial period of survival in a male-dominated profession, women judges unquestionably have developed a heightened awareness of the problems that other women encounter in life and in law; it is not all surprising that they remain particularly sensitive to these problems" (Tobias, 1990: 178). Similarly, Judge A. Leon Higginbotham, one of the longest serving African American judges on the U.S.

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substantial for the average Latino lawyer (Chavez, 2011). Thus, perceptions of discrimination among Latinos are as prevalent as African Americans in the legal profession.

[11] In 1993, for example, an African American judge was arrested on suspicion of using a stolen credit card at an upscale shopping mall in New Jersey. Despite showing his identification and adamantly denying the charges, the police took him into custody where he was chained to a wall for three and a half hours (Margolick, 1994).

Appellate Courts said that "lacking such [minority] outsiders, a court will be left with only its own self-perpetuating views, preferences and prejudices to inform its decisions" (Higginbotham, 1993: 1042). Most recently, Justice Sotomayor, who once served on the Appeals Court for the Second Circuit, made national headlines when she said, "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life" (Sotomayor 2002: 92). In all, these examples highlight how life experiences associated race, ethnicity, and gender can translate into unique perspectives that are different from their white and male colleagues.

The theory of descriptive representation also posits that divergence in behavior between minority and non-minority jurists depends on the presence of those policy issues considered to be important to racial and ethnic minorities, such as civil rights and crime (Goldman, 1978-1979; Songer et al., 1994; Walker and Barrow, 1985). The extant research focusing on descriptive representation and individual voting behavior in the courtroom, however, demonstrates rather mixed results (Scherer 2004-2005; Boyd et al. 2010). For example, African American judges in the federal courts are no more likely than white judges to rule in favor of Black policy issues and employment discrimination cases (Segal, 2000: 174; Walker and Barrow, 1985; Farhang and Wawro, 2004 Gottschall, 1983-1984). Still, others find important differences between Black and white judges in criminal cases (Gottschall 1983-1984). While Gottschall (1983-1984) shows that Black jurists are more likely to rule in favor of the defendant in criminal cases more generally, Scherer (2004-2005) demonstrates a similar trend among Black judges in search and seizure cases –a subset of criminal cases. These findings, moreover, are

reinforced by more recent work that examines the intersectionality of race and gender, as women of color are more likely than their male counterparts to rule in favor of the defendant (Collins and Moyer, 2008).

In comparison to African American judges, though, studies demonstrate much different behavior among Latino judges. Different from theoretical expectations, Latino judges in the lower federal courts are less likely to rule in favor of the defendant in criminal cases (Manning, 2004), but no more likely than non-Latino judges to rule against the plaintiff across race and employment discrimination claims more generally (Manning, 2004; Farhang and Wawro, 2004, footnote 16). In all, the findings suggest that the theory of descriptive representation may not necessarily explain more favorable decisions among under-represented groups in the federal courts. To explain these different results, Manning (2004) reasons that Latino jurists may represent a "special cadre" within their own ethnic group, as they may be subject to a number of extra-legal influences including, ideology, judicial norms and culture, and socio-economic differences that can mitigate the role of discrimination in voting behavior (11). In all, the research focusing on the individual voting behavior of African American and Latino judges suggests that minority jurists not only vote differently from one another in criminal court cases, but divergence in voting behavior between minority and non-minority jurists is not as consistent across policy issues considered salient to racial and ethnic minorities.

Diversity on the Bench and Influence Over Voting Behavior

As judges who sit on three-member panels, it has also been well established that a great deal of interaction takes place among panel colleagues (Collins and Martinek,

2011). Consequently, a burgeoning line of research considers the role of "panel effects," or the influence that judges can have on their panel colleagues (Cross, 2007: 148). Assuming that judges are motivated by both policy and non-policy goals (Baum, 1997), this line of research contends that racial and ethnic minority judges, who represent polarizing interests, can crystallize issues of race and ethnicity among their panel colleagues (Mansbridge, 1999), threaten panel consensus and gain bargaining leverage by filing dissenting opinions (Van Winkle, 1997; Songer et al. 1994; see also Farhang Wawro, 2004), and create cues of policy specialization through their mere presence on the bench (Kastellec, forthcoming). While minority judges are expected to vote more favorably towards policy issues considered to salient to racial and ethnic minorities (Boyd et al., 2010), white judges are expected to defer to their minority colleagues and vote differently than how they would otherwise on homogenous-white panels. For example, African American judges sitting on majority-white panels are found to increase the probability of a favorable ruling in affirmative action and voting rights cases (Katellec, forthcoming; Cox and Miles, 2008). Across employment discrimination claims, however, the presence of an African American judge has no significant effect on both individual votes and panel outcomes (Farhang and Wawro, 2004). Latino judges sitting on majority-white panels also have no substantive effect on panel outcomes when it comes to affirmative action and employment discrimination claims (Kastellec, forthcoming; Farhang and Wawro, 2004). Thus, the research on panel effects also demonstrates mixed results with regards to voting behavior, even when the social composition of the panel is taken into account.

The Role of Claimant Effects

Perhaps one reason why studies find mixed results and even sometimes more conservative behavior is because they do not account for the race and ethnicity of the claimant and the role that claimants' background characteristics might have on the behavior of African American and Latino judges. According to Steffensmeier and Demuth (2001), judges rarely have complete information about cases (147). To reduce uncertainty, therefore, judges rely on a number of different sources for their information, ranging from the facts of the case and legal precedent to amicus curiae briefs and the use of case law by the appealing and defending parties. Additionally, judges may also rely on the appellants' background characteristics to facilitate their rulings, including the race, gender, and social class of the appellant (Steffensmeier and Demuth, 2001:145). Acting as informational cues, the presence of a claimant with similar characteristics may trigger feelings of commonality and highlight experiences with discrimination that can lead to more favorable rulings (Steffensmeier and Demuth, 2001: 145). This is not to suggest, however, that descriptive representatives engage in bias behavior. Rather, by treating minorities with greater leniency, descriptive representatives essentially "level the playing field" and ensure that racial and ethnic minorities do not receive harsher treatment than they might deserve (Welch, Combs, and Gruhl, 1988: 127).

Even though there has been an increase in the amount of research that focuses on the individual voting behavior of federal court judges, this argument has been largely tested across courts at the state and local level of government. However, these analyses have demonstrated mixed results at best. Welch, Combs, and Gruhl, (1988), for example,

find that African American judges in "Metro City" are more likely to send white defendants to prison and sentence Black defendants to jail for shorter periods of time. Female jurists are also more likely to treat men and women defendants more equally, countering the more paternalistic behavior of male judges who have a tendency to give lighter sentences to female defendants (Gruhl, Spohn, and Welch, 1981). Still, others show that African American and Latino judges tend to rule against co-racial and co-ethnics claimants (Steffensmeier and Britt, 2001; Spohn, 1990; Uhlman, 1978). In the state district courts in El Paso, Texas, for example, Holmes et al. (1993) find that Latino judges are more likely than white judges to rule against both whites and Latinos in criminal cases (Holmes et al., 1993). Steffensmeier and Britt, (2001) also find a similar pattern among African American judges in Pennsylvania, as Black judges are more likely to sentence both Black and white defendants to prison than their white colleagues.

Several arguments have been offered to explain this more conservative behavior among African American and Latino judges. As judges who are subject to partisan and non-partisan elections, some argue that the voters can screen out minority candidates with polarizing interests (Spohn, 1990; Uhlman, 1978). Here, constituents are less likely to vote for judicial candidates who represent more ideologically extreme viewpoints. Still others contend that judges may be less willing to diverge from the preferences of their colleagues to pursue non-policy goals (Spohn, 1990; Welch, Combs, and Gruhl, 1988). According to this view, minority judges may prefer collegiality and good working relations to feelings of isolation, which can result from viewpoints that run counter to judicial norms (Carp, Stidham, and Manning, 2004). The selection process can also have an important effect on voting behavior (e.g. Brace and Hall, 1997; Hall and Brace, 1992).

Holmes et al. (1993), for example, argue that minority judges may be subject to pressures from the local community to find justice for the victim. Similarly, Hall and Brace (1989) reason that judges who disagree with their constituents' preferences must alter their behavior and be careful not to distinguish themselves from the rest of the court, especially among those policy issues considered to be salient or controversial (396).

In the federal courts, however, the selection process is much different, as judges are appointed and given lifetime tenure on good behavior. Federal judges, moreover, are assumed to have a great deal of latitude to vote according to their most preferred preferences (Rhode, 1972; Rhode and Spaeth, 1976: 72). In the U.S. Courts of Appeals, especially, the ability to pursue their preferences is reinforced by the low probability of being appointed to the Supreme Court and its de facto "court of last resort" status, which can moderate other goals, such as career mobility, and reduce the probability of appellate-court decisions being overturned by higher-court authorities.[12]

Hypotheses

Based on the above arguments *Hypothesis 1* states that an African American and Latino judge will be more likely to rule in favor of a co-racial or co-ethnic claimant. Research focusing on panel effects also suggests that minority jurists will continue to demonstrate divergence in behavior when they sit on majority-white panels. Thus, *Hypothesis 2* states that minority judges, sitting on majority-white panels, will be more

[12] This does not suggest that appellate-court judges are not held to any constraints entirely, as research demonstrates that judges can be constrained by the preferences of their panel colleagues (see Epstein and Knight, 1998; Collins and Moyer, 2008) and judicial hierarchies when there is a lack of congruence in policy preferences (Van Winkle, 1997).

likely to rule in favor of co-racial and co-ethnic claimants. Finally, I expect the presence of a co-racial or a co-ethnic claimant to improve the quality of deliberation among minority judges and enhance the perception that minority judges are policy specialists. Thus, *Hypothesis 3* states that white judges, sitting on racially and ethnically diverse panels, will be more likely to rule in favor of co-racial and co-ethnic claimants.

Data and Methods

Focusing on the U.S. Courts of Appeals, I analyze 3,985 individual votes across a universe of Title VII employment discrimination claims based on race and national origin.[13] The period of study is between 2001 and 2009.[14] Since the data contains a

[13] Since the there are three judges per panel, the total number of observations is typically divisible by three. In this case, five observations were excluded from the analysis. First, I excluded Asian American judges from the analysis because there were very few observations (2 observations). Also, three observations were excluded from the analysis due to missing data.

It is also important to note the changes in the total number of observations between Table 2.5 and 2.7. To ease the interpretation of the results and because some of the variables accounting for "panel effects" did not have enough observations for proper analysis, the number observations decreases from 3,985 to 3,930. These include all female panels (12 observations), majority-Latino panels (3 observations), and panels consisting of one African American, Latino, and white judge (36 observations). Ideally, these variables would have been identified as *Female Judge (two female colleagues), White Judge (two Latino colleagues), Latino judge (one Latino colleague), White Judge (Black and Latino colleague), Black Judge (Latino and white Colleague),* and *Latino Judge (Black and white colleague).* Finally, I exclude Asian American judges (4 observations) from the analysis. I retested the model by including the above variables in the baseline category. The results demonstrate no substantive changes.

[14]These decisions are collected between 1/1/2001 and 12/31/2009. Since there are few African American judges in the U.S. Courts of Appeals and even fewer Latino judges, I chose to begin the analysis in 2001 to

universe of decisions in which judges are randomly assigned to three-member panels, it also captures a representative pool of Latino and African American appellate-court judges during the period of study.[15] Specifically, the dataset includes 13 Latino and 17 African American judges in the U.S. Courts of Appeals. Five additional judges from the U.S. District Courts (1 Latino and 4 African American judges) are also included in the dataset. Serving as a judge designate, these judges acted in a temporary capacity in order

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capture all Clinton appointees at the onset of the analysis. The appointments made by President Clinton currently represent one of the greatest efforts to diversify the racial and ethnic composition of the Appeals Court since the Carter administration. President Clinton is responsible for appointing over half of the Latino judges in the U.S. Courts of Appeals, increasing the total number from 5 to 12. Similarly, President Clinton is also responsible for appointing 9 African American judges, increasing the total number of African Americans on the appeals-court bench to 20. I chose end the analysis in 2009 because it represented the most current decisions during the time of collection. The dataset does not include any judges appointed by President Obama.

[15] Due to regular appointments and judges leaving office, the number of African American and Latino judges has fluctuated throughout the years. Between 2001 and 2009, the mean average of Latino judges sitting in the U.S. Courts of Appeals was approximately 14. The average number of African American judges was approximately 19.

to improve the efficiency of the Appeals Court.[16] All decisions are published in the *Federal Reporter* and are accessible through Westlaw.[17]

I focus on Title VII claims for several reasons. Following previous scholarship, I expect divergence in judicial behavior between descriptive representatives and white judges to be conditional upon the presence of policy issues considered salient to racial and ethnic minorities (Songer et al., 1994). Despite the passage of the Civil Rights Act 1964 (Title VII), discrimination in the workplace continues to be an important problem facing both groups (e.g. Acs and Loprest, 2009; Coleman, 2003; Darity and Mason, 1998; Espino and Franz, 2002; Goldsmith, Hamilton, and Darity, 2006; Kenny and Wissoker, 1994). These experiences, moreover, have translated into divergent attitudes towards discrimination between whites and racial and ethnic minorities (Pew Center, 2005; Pew Hispanic, 2006; Rodriguez, 2008). Second, Title VII claims based on race and national origin offer judges more discretion to rule their most preferred policy position, as studies demonstrate circuit court splits over the interpretation of Supreme Court precedent (Green, 1999: 997-998; Lanctot, 2000-2001). Finally, by narrowing the case selection to

[16] Refer to Table A.1 in Appendix A for a complete list of African American and Latino Judges who participated in Title VII employment discrimination cases between 2001 and 2009.

[17] All published decisions involving race and national origin are accessible through the Westlaw Database, using Key Numbers Search. Cases are organized by subject and are located in the Civil Rights Folder. The use of published decisions is well established by judicial scholars (Manning et al., 2004), as they represent cases with higher precedential value and greater discretionary interpretation. This argument, moreover, is reinforced by studies that examine the behavior of judges across published and unpublished decisions (Keele, Malmsheimer, Floyd, and Zhang, 2009; Ringquist and Emmert, 1999).

discrimination cases in the workplace, I improve the ability to control for legal precedent, as discrimination cases based on discrimination, retaliation, and hostile work environment maintain similar legal frameworks.

Following Segal (2000), the unit of analysis is the individual vote of each judge per grievance within a case.[18] More specifically, this includes all decisions involving a discrimination, hostile-work environment, or retaliation claim.[19] In the U.S. Courts of Appeals, for example, individual cases can range from a single dispute to multiple

[18] Since I am interested in individual-level variables and because judges appear in the dataset multiple times within and across cases, I chose to cluster around each individual judge (e.g. Collins and Martinek, 2011; Collins and Moyer; 2008). Clustering around the judge also represents a more cautionary approach, as the size of the standard errors tend to increase for variables that measure judges' characteristics (Zorn, 2006). Finally, in Table A.2 in Appendix A, I also re-estimated the model by clustering around the panel decision since it accounts for the introduction of case-stimuli (e.g. case facts, legal precedent, type of grievance) (see Collins and Moyer, 2008; Farhang and Wawro, 2004). The results indicate no substantive changes with regards to the main independent variables.

[19] According to the Equal Employment Opportunity Commission, discrimination involves treating someone unfavorably because of race or personal characteristics associated with race (E.E.O.C. n. d). Examples of discrimination include but are not limited to "hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment" (E.E.O.C., n. d.). Hostile work environment or harassment generally refers to offensive behavior by an employer, supervisor, or co-worker. This includes "racial slurs, offensive or derogatory remarks, or displays of racially offensive symbols" (E.E.O.C., n. d). Finally retaliation refers to any attempt to discriminate against an employee for filing a charge of discrimination, complaining to their employer about discrimination, or participating in an employment discrimination proceeding (E.E.O.C., n. d).

grievances. If a case included more the one claimant, I recorded all grievances per claimant. A case involving two claimants, for example, rendered four individual votes per judge if both claimants appealed two issues apiece. Since there are the three judges per panel, the total number of observations or votes would be twelve. If, however, multiple claimants were treated as a collective group by the panel of judges in the opinion, such as a class action lawsuit, all claimants were then recorded as an individual claimant. In all, the strategy led to 2,401 individual votes involving discrimination claims, 486 votes involving hostile work environment, and 1,098 votes involving claims of retaliation.

It is important to note that this collection strategy is much different from previous collection efforts. Though studies focusing on judicial behavior slightly differ, one strategy is to record cases where there is a clear victor. This involves cases that were either unanimously decided across all issues (e.g. Martinek and Collins, 2008) or split-decision cases where the majority of decisions were decided in favor of one party over another (e.g. Farhang and Wawro, 2004). Take for instance, a claimant who appeals their case with three specific grievances: discrimination, retaliation, and hostile work environment. If a panel rules in favor of the claimant in at least two of the three issues, one would be able to identify the claimant as the clear victor and not the employer. The dependent variable would then be coded as a single "favorable vote" for each individual judge on the panel. If, however, a case involved four issues in which the claimant and employer each won half of the decisions, the case would then be excluded from the entire analysis.

Overall, this collection strategy has several advantages. Different from other research, one is able to account for the full range of decisions made by judges in the U.S.

Courts of Appeals. Consequently, it is possible to increase the number of observations per judge, including the number of decisions made by under-represented groups, such as Latino and African American judges. Second, one is able to account for different types of discrimination claims, such as claims based on retaliation, discrimination, and hostile work environment. Otherwise, researchers are limited to explaining the voting behavior of judges across discrimination cases more generally. Finally, and most pertinent to this study, it is possible to account for decisions involving multiple claimants from diverse racial and ethnic backgrounds. Not only does this strategy improve one's ability to examine how judges rule towards specific claimants, but it also provides an added dimension to the study of descriptive representation by focusing on the direct consequences that judges' decisions can have on racial and ethnic minorities who come before the courts to appeal their case.

Dependent Variable

The main dependent variable is *Favorable Vote*, which captures the individual votes for each judge per grievance in the analysis. A vote in favor of the claimant is coded as "1" (26 percent). More specifically, these decisions include votes in favor of employees who file discrimination claims against their employer, supervisor, or co-worker.[20] By contrast, a vote against the claimant is coded as "0" (74 percent). In this case, a judge rules against the employee. Although the distribution of the dependent variable illustrates the difficulty in winning a race discrimination case (Selmi, 2000-2001), it also suggests that a vote in favor of the claimant is more meaningful. Given the

[20] I refer to employees as "claimant" since they can represent either the appellant or the appellee.

dichotomous nature of the dependent variable, I utilize Logistic regression analysis to test all hypotheses (Long and Freese, 2006).

Independent Variables

The main independent variables are *Latino Judge* and *African American Judge*. Both variables are dichotomous and are coded as "1" if a judge involved in the decision is identified as either Latino or African American by the *Judicial Biographical Database* (Federal Judicial Center, n.d.). Non-African American and Non-Latino judges are, therefore, coded as "0." Next, I interacted *Latino Judge* with *Latino Claimant* and *African American Judge* with *Black Claimant* to test the extent to which racial and ethnic cues can condition the voting behavior of Latino and African American judges. Both interaction effects are coded as "1" to indicate an African American judge or a Latino judge voting on a Black or Latino claimant, respectively. All other judge-claimant combinations are coded as "0."

Table 2.1 presents the descriptive statistics for the main independent variables in the analysis, showing the distribution of votes by the race and ethnicity of the judge and the race and ethnicity of the claimant. In all, decisions involving African American and Latino judges account for 9.56 percent (381) and 4.37 percent (174) of the observations, respectively. Excluding Asian American judges from the analysis, white judges serve as the baseline for comparison.[21] In comparison to other claimants, the table also

[21] I excluded Asian American judges from the analysis because they only accounted for 2 observations during the period of study.

demonstrates that Latino judges ruled towards another Latino claimants 0.88 percent (35) of the time. African American judges, by contrast, ruled towards Black claimants with much greater frequency, as African American judges voted on a Black claimant more than 6.62 percent (264) of the time. This distribution is not surprising since Black claimants represent the largest group of claimants during the period of study.

Table 2.1: Distribution of Votes by the Race and Ethnicity of the Judge and the Claimant in Discrimination Claims (2001-2009)

	Black Claimant	Latino Claimant (Non-Black)	Asian Claimant	Middle Eastern Claimant (Non- Black)	American Indian Claimant	White Claimant (non-Latino)	Total
African American Judge	69.29%	6.30%	5.25%	1.31%	0.79%	17.06%	100%
	6.62%	0.60%	0.50%	0.13%	0.07%	1.63%	9.56%
	(264)	(24)	(20)	(5)	(3)	(65)	(381)
Latino Judge	55.17%	20.11%	2.87%	8.05%	0.57%	13.22%	100%
	2.41%	0.88%	0.13%	0.35%	0.03%	0.58%	4.37%
	(96)	(35)	(5)	(14)	(1)	(23)	(174)
White Judge	63.82%	12.54%	4.84%	2.92%	0.87%	15.01%	100%
	54.93%	10.79%	4.17%	2.51%	0.75%	12.92%	86.07%
	(2,189)	(430)	(166)	(100)	(30)	(515)	(3,430)

Note: For each cell, the top row depicts row percentages and the second row depicts total percentages. The number of observations is in parentheses. Since total percentages are rounded, they do not total 100%

Following research on panel effects, I also account for the social composition of panels (Kastellec, forthcoming; Boyd et al., 2010; Farhang and Wawro, 2010, 2004; Cox and Miles, 2008). In line with Farhang and Wawro's (2004) coding scheme, I included three variables that account for African American and Latino judges sitting on majority-white and majority-minority panels. These variables include the following: *African American Judge (two white colleagues)*, *African American Judge (one Black colleague)*, and *Latino Judge (two white colleagues)*. Similarly, I also control for a host of variables that consider how white judges vote while sitting on racially and ethnically diverse panels. These variables include the following: *White Judge (one Black colleague)*, *White Judge (two Black colleagues)*, and *White Judge (one Latino colleague)*. All white panels, therefore, serve as the baseline for comparison. All variables are dichotomous and are coded as "1" to indicate each panel combination and "0" if otherwise. Taking into consideration the role of claimant effects, I also interacted *Latino Judge (two white colleagues)* and *White judge (one Latino colleague)* with *Latino Claimant*. Similarly, I also interacted *African American Judge (two white colleagues)* and *White Judge (one Black colleague)* with *Black Claimant*. These variables are coded as "1" to indicate racially and ethnically diverse panels and their decisions involving Black claimants. A coding of "0" indicates otherwise.

Similar to the previous table, Table 2.2 shows the distribution of votes by the race and ethnicity of the judge and the claimant across different panel compositions. The table demonstrates that African American and Latino judges sitting on majority-white panels ruled towards co-racial and co-ethnic claimants 5.27 percent (207) and 2.24 percent (88) of the time, respectively. The relative distribution of white judges ruling towards Black

and Latino claimants is similar to African American and Latino judges sitting on majority-white panels. However, their frequency is somewhat greater given that white judges are over-represented in the U.S. Courts of Appeals. While white judges sitting on a panel with one African American judge ruled towards a Black claimant 10.53 percent (414) of the time, white judges sitting on a panel with one Latino judge ruled towards a Latino claimant 4.48 percent (176) of the time. In all, the distribution of individual votes across these different panel compositions demonstrates that racially diverse panels are more likely to adjudicate a claim involving a Black claimant than an ethnically diverse panel adjudicating a claim involving a Latino claimant.

Table 2.2: Distribution of Votes by the Race and Ethnicity of the Judge and the Claimant in Discrimination Claims (2001-2009)

	Black Claimant	Latino Claimant (Non-Black)	Asian Claimant	Middle Eastern Claimant (Non- Black)	American Indian Claimant	White Claimant (non-Latino)	Total
African American Judge (two white colleagues)	66.35% 5.27% (207)	7.05% 0.56% (22)	6.41% 0.51% (20)	0.96% 0.08% (3)	0.96% 0.08% (3)	18.27% 1.45% (57)	100% 7.94% (312)
African American Judge (one Black colleague)	88.9% 1.22% (48)	0% 0% (0)	0% 0% (0)	3.70% 0.05% (2)	0% 0% (0)	7.41% 0.10% (4)	100% 1.37% (54)
Latino Judge (two white colleagues)	55.00% 2.24% (88)	20.62% 0.84% (33)	3.12% 0.13% (5)	8.75% 0.36% (14)	0.62% 0.03% (1)	11.88% 0.48% (19)	100% 4.07% (160)
White (one Black colleague)	66.35% 10.53% (414)	7.05% 1.12% (44)	6.73% 1.07% (42)	0.96% 0.15% (6)	0.64% 0.10% (4)	18.27% 2.90% (114)	100% 15.88% (624)
White Judge (two Black colleagues)	88.89% 0.61% (24)	0% 0% (0)	0% 0% (0)	3.70% 0.03% (1)	0% 0% (0)	7.41% 0.05% (2)	100% 0.69% (27)
White Judge (one Latino colleague)	55.00% 4.48% (176)	20.62% 1.68% (66)	3.12% 0.25% (10)	8.75% 0.71% (28)	0.62% 0.05% (2)	11.88% 0.97% (38)	100% 8.14% (320)
White Judge (all white panel)	64.12% 39.69% (1,560)	13.07% 8.09% (318)	4.69% 2.90% (114)	2.59% 1.60% (63)	0.99% 4.48% (24)	14.55% 9.00% (354)	100% 61.91% (2433)

Note: For each cell, the top row depicts row percentages and the second row depicts total percentages. The number of observations is in parentheses. Since total percentages are rounded, they do not total 100%

Control Variables

In addition to the variables of interest, I also control for a host of background characteristics, which are found to have a significant influence on judicial behavior. Table 2.3 provides the descriptive statistics for all control variables. Following research that finds female judges to rule more liberally in employment discrimination cases (Songer et al., 1994), I include a variable for *Female Judge*. This variable is coded as "1" to indicate the presence of a female judge and "0" to indicate male judges. Similarly, I also control for the gender composition of panels (Boyd et al., 2010; Farhang and Wawro, 2004). These variables include the following: *Female Judge (two male colleagues), Female Judge (one female colleague), Male Judge (one female colleague),* and *Male Judge (two female colleagues)*. A coding of "1" indicates one of the above panel compositions. A coding of "0" indicates otherwise.

Table 2.3. Descriptive Statistics

Variables	Mean	Std. Dev.	Min	Max
Female Judge (two male colleagues)	0.101	0.301	0	1
Female Judge (one female colleague)	0.889	0.284	0	1
Male Judge (one female colleague)	0.196	0.397	0	1
Female Judge (two female colleagues)	0.461	0.210	0	1
Female Judge	0.195	0.396	0	1
Born in South	0.151	0.358	0	1
Age of Judge	63.873	9.733	39	98
Former Prosecutor	0.427	0.495	0	1
Ivy League Education	0.2070	0.405	0	1
Designate Judge	0.061	0.240	0	1
Judge Ideology	0.129	0.362	-0.580	0.577
Ideology of Panel Median	0.146	0.313	-0.538	0.577
Ideology of Circuit Median	0.247	0.203	-0.309	0.549
Ideology of Supreme Court Median	0.387	0.237	0.007	1.18
Lower Court Decision (Favorable Vote)	0.061	0.240	0	1
Amicus Curiae Brief	0.055	0.228	0	1
Discrimination Case	0.603	0.489	0	1
Hostile Work Environment Case	0.122	0.327	0	1
Latino Claimant	0.123	0.328	0	1
Black Claimant	0.640	0.480	0	1
Asian Claimant	0.048	0.214	0	1
Middle Eastern Claimant	0.030	0.170	0	1
American Indian Claimant	0.009	0.092	0	1
1st Circuit	0.037	0.189	0	1
2nd Circuit	0.045	0.208	0	1
3rd Circuit	0.018	0.133	0	1
4th Circuit	0.047	0.213	0	1
5th Circuit	0.080	0.271	0	1
6th Circuit	0.074	0.261	0	1
7th Circuit	0.272	0.445	0	1
8th Circuit	0.183	0.387	0	1
10th Circuit	0.072	0.259	0	1
11th Circuit	0.053	0.223	0	1
D.C. Circuit	0.077	0.266	0	1
2002	0.019	0.136	0	1
2003	0.175	0.380	0	1
2004	0.190	0.393	0	1
2005	0.130	0.337	0	1
2006	0.108	0.311	0	1
2007	0.102	0.302	0	1
2008	0.089	0.285	0	1
2009	0.068	0.252	0	1

I also control for the *Age* of the judge at the time the case was decided, as Manning et al. (2004) find that judges representing older age cohorts are more likely to rule in favor of the claimant in age discrimination claims. Following Songer and Davis (1990), I also expect judges born in the South to rule against racial and ethnic minorities. *Born South* is a dichotomous variable coded as "1" if a judge was born in the South and "0" if otherwise.[22] Career backgrounds, such as prosecutorial experiences, can also have an important and socializing effect on behavioral outcomes (e.g. Tate, 1981). For example, Tate (1981) finds that former prosecutors are more likely to rule conservatively. *Former Prosecutor* is a dichotomous variable coded as "1" if a judge was a former prosecutor or attorney general prior to being appointed to the federal court. A coding of "0" indicates otherwise. In addition I control for judges' educational backgrounds, as Tate (1981) finds judges from more prestigious backgrounds to behave more liberally. *Ivy League Education* is coded as "1" if a judge graduated from one of the eight ivy-league law schools.[23] All information regarding judges' background characteristics can be found at the *Judicial Biographical Database* (Federal Judicial Center, n. d.). Also, since I am interested in the behavior of appellate-court judges, I control for *Designate Judge*. *Designate Judge* is coded as "1" if a judge is from the U.S. District Courts or

[22] I define the South as the following: Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Louisiana, and Arkansas.

[23] Ivy league schools include the following: Brown University, Columba University, Cornell University, Dartmouth University, Harvard University, Pennsylvania University, Princeton University and Yale University (Leicth, 1978).

other specialty federal courts, such as the International Trade Court. All appeals-court judges, therefore, are coded as "0."

The third cluster of variables accounts for attitudes, strategic bargaining, and intra-branch relations. Following Segal and Spaeth (1993), I control for judges' attitudes or *Ideology*. The attitudinal model predicts that judicial behavior is a function of attitudes vis a vis the facts of the case (Segal and Spaeth, 1993). Therefore, I expect judges with a more liberal ideology to vote in favor of racial and ethnic minorities. To measure attitudes, I utilize Giles, Hettinger, and Peppers (GHP) (2001) coding scheme, which range from -1 (most liberal to 1 (most conservative).[24] A negative coefficient, therefore, indicates that judges with more conservative ideologies are less likely to rule in favor of the claimant. However, judges do not make decisions in a vacuum (Collins and Martinek, 2011). The strategic model of voting behavior, for example, posits that judges "realize that their ability to achieve their goals depends on the consideration of the preferences of other actors, the choices they expect others to make, and the institutional context in which they act" (Epstein and Knight, 1998: 10). Following Collins and Moyer's (2008) coding

[24] It is important to note that partisanship and GHP scores are highly correlated (.90). However, I opted to use GHP scores because they capture key actors involved in the appointment process. Specifically, the coding scheme is based upon *Poole-Rosenthal Common Space* scores that measure the ideology of the president and home-state senators. In the absence of senatorial courtesy, a judge's ideology score is the same as the president's. If one home-state senator shares the same party affiliation as the president, then a judge's ideological score reflects the ideological score of the home-state senator. Finally, if two home-state senators share the same party affiliation as the president, then a judge's ideological score is the mean value of the senator's scores (see Giles et al., 2001).

scheme, I control for the *Panel's Ideological Median*, as the judges representing the ideological median may have the greatest influence on her panel colleagues. Similarly, I control for the *Circuit's Ideological Median*, as decisions may be overturned by a court *en banc* if rulings do not conform to the ideological preferences of the circuit (Van Winkle, 1997). Both the *Panel Ideological Median* and *Circuit Ideological Median* are measured as the median GHP ideological score at the time of the decision. Finally, judges may be responsive to the Supreme Court since it has control over its own docket and the power to overturn lower-court decisions (Songer, Segal, and Cameron, 1994, but see Cross and Tiller, 2008). To measure *Median Supreme Court Justice*, I use Martin and Quinn (2002) ideological scores for each calendar term. These scores are unbounded, with negative values representing more liberal Courts and positive values representing more conservative Courts. Finally, to account for routine cases, I control for *Lower Court Decision (Favorable Vote)* (see Collins and Moyer, 2008). This variable is coded as "1" if the lower federal court ruled in favor of the claimant and "0" if otherwise.

The dataset also provides the unique opportunity to control for the facts of the case, which can significantly mediate the behavior of judges. Most notably, I control for the race and ethnicity of the claimant, including *Black Claimant*, *Latino Claimant (non-Black), Asian American, Middle Eastern Claimant (non-Black), and American Indian Claimant*. Following research that focuses on the relationship between discrimination, skin color, and national origin (Kim, 1999; see also Espino and Franz, 2002; Goldsmith et al., 2006) I expect judges to be less likely to rule in favor of Black claimants than any other racial and ethnic group. All claimant variables are coded as "1" to indicate claimants' racial and ethnic backgrounds and "0" if otherwise. Non-Latino white

claimants, therefore, serve as the baseline for comparison. The race and ethnicity of the claimants are recorded in the *Federal Reporter*.[25] I also control for *Amicus Curiae* briefs, as studies demonstrate that special interest groups can influence judicial behavior (Collins and Martinek, 2011). Briefs intended to influence a favorable outcome for racial or ethnic minorities are coded as "1" and "0" if otherwise. Finally, I account for *Discrimination Claims* and *Hostile Work Environment Claims*, holding retaliation claims as a baseline for comparison (Parker, 2009). Both claim types are coded as "1" to indicate the presence of a discrimination or hostile work environment issue and "0" if otherwise.[26]

[25] *Black Claimant* refers those who "socially considered to be black," regardless of national origin (Abramson, 1977). This coding decision is supported by research that indicates that darker skin color is positively correlated with heightened levels of discrimination (Espino and Franz, 2002). Evidence also indicates that skin color can play an important role in Latinos' perceived commonality with African Americans (Nicholson, Pantoja, and Segura, 2005). *Latino Claimants (non-Black)* include individuals "with ancestors from national origins in which Spanish is a significant and often dominant language" (Garcia and Sanchez, 2008: 7). *Non-Black Middle Eastern Claimants* refer to individuals whose ancestors originate from the Middle East and Northern Africa. *Asian Claimants* refer to "having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent" (Lien, Conway, and Wong, 2004: 3). *American Indian Claimants*, though, are more difficult to define. Wilkins (2002) suggest that the definition can be clustered around five categories: 1) blood quantum 2) membership of a federally recognized indigenous community 3) residence on an Indian reservation 4) decadency, and 5) self-identification.

[26] Parker (2009), for example, demonstrates that judges are less likely to rule for the plaintiff in retaliation cases, though the differences were small.

The last cluster of variables accounts for the circuit norms and the political context during the time of the decision (see Farhang and Wawro, 2004). Specifically, I control for each of the 11 circuits in the U.S. Courts of Appeals, including the Circuit Court for Washington D.C. Since the 9th Circuit Court of Appeals tends to be more liberal than other circuits (Scherer, 2004-2005), the 9th Circuit Court of Appeals shall serve as the baseline for comparison. Finally, I account for yearly controls to take into consideration the political context in which decisions were made across Title VII claims.

Results

Focusing on Title VII employment discrimination claims, Table 2.4 compares the proportion of favorable votes of African American and Latino judges with white judges. In line with expectations, the results indicate that African American judges are more likely than white judges to rule in favor of the claimant more generally ($p < .10$) demonstrating a 3 percentage-point difference between the two groups. The preliminary results also show that Latino judges are less likely than their white colleagues to rule in favor of the claimant ($p < .01$). In fact, the proportion of favorable rulings among Latino judges is about 9 percentage-points less than white judges and more than 12 percentage-points less than African American judges. Interestingly, this less-than favorable behavior also continues to hold when Latino judges sit on majority-white panels ($p < .01$).

In the context of claimant effects, the preliminary results demonstrate partial support for my hypotheses. For example, Latino judges are also less likely than their white colleagues to rule in favor of other Latino claimants ($p < .01$) and this is especially the case when Latino judges sit on majority-white panels ($p < .001$). African American judges, however, demonstrate much different behavior, as they are more likely than white

judges to rule in favor of other Black claimants ($p < .01$). This more favorable voting behavior also continues to hold when African American judges sit on majority-white panels ($p < .001$). Interestingly, the proportion of favorable votes is about 11 percentage-points greater than white colleagues sitting on all-white panels. In all, these initial findings suggest that while African American judges are more likely than white and Latino judges to rule in favor of the claimant, African American and Latino judges are conditioned by the presence of co-racial and co-ethnic cues but in different ways.

Table 2.4: Proportion of Favorable Votes by White, African American, and Latino Judges across Employment Discrimination Claims (2001-2009)

	All Claimants		**Black Claimant**		**Latino Claimant**	
	Favorable Vote	SE	Favorable Vote	SE	Favorable Vote	SE
Individual Level						
White Judge	0.2601	0.007	0.2243	0.008	0.4209	0.024
African American Judge	0.2992†	0.023	0.3068**	0.028	---	---
Latino Judge	0.1724**	0.028	---	---	0.1429**	0.060
Panel Level						
White Judge (All white panel)	0.2679	0.008	0.2173	0.010	0.5000	0.281
African American Judge (Two white colleagues)	0.3044	0.026	0.3236***	0.032	---	---
Latino Judge (Two White Judges)	0.1562**	0.028	---	---	0.0909***	0.051

†$p <$. 10 two-tailed, *$p < .05$, two-tailed, **$p < .01$ two-tailed, ***$p < .001$, two-tailed.
Note: Table compares the proportion of favorable votes among white, Latino, and African American judges (t-test). It also compares African American, Latino, and white voting behavior for judges sitting on majority-white panels. The dependent variable is a vote in favor of the claimant.

The next step in the analysis is to test whether the bivariate results continue to hold once alternative explanations of judicial behavior are taken into account. Table 2.5 presents two Logistic regression models. Specifically, model 1 presents the constrained model, which analyzes the behavior of African American and Latino judges towards all claimants. Model 2 presents the fully specified model, which captures how Latino and African American judges rule towards co-ethnic and co-racial claimants. Specifically, the intent here is to examine the extent to which the voting behavior of Latino and African American judges is mediated by the presence of racial and ethnic cues.

Table 2.5: Logistic Model of Individual Voting Behavior in the U.S. Court of Appeals (2001-2009)

	Model 1 (Constrained Model)			Model 2 (Full Model)		
Variables	**Coef.**	***SE Robust***	**Discrete Change (min→max)**	**Coef.**	***SE Robust***	**Discrete Change (min→max)**
Background Characteristics						
Latino Judge	-1.220*	0.473	-0.1481	-0.950*	0.410	-0.1246
Latino Judge*Latino Claimant	---	---	---	-1.224	1.075	-0.1439
African American Judge	0.334†	0.195	0.0615	-0.156	0.300	-0.0257
African American Judge*Black Claimant	---	---	---	0.688*	0.348	0.1364
Female Judge	0.305†	0.169	0.0549	0.314†	0.168	0.0566
Born in South	0.039	0.168	0.0067	0.029	0.168	0.0049
Age of Judge	-0.001	0.009	-0.0067	0.000	0.009	-0.0027
Former Prosecutor	-0.090	0.162	-0.0153	-0.113	0.162	-0.0192
Ivy League Education	-0.201	0.174	-0.0333	-0.212	0.172	-0.0351
Designate Judge	-0.117	0.290	-0.0195	-0.120	0.293	-0.0199
Attitudes & Strategic Interaction						
Judge Ideology	-0.411†	0.216	-0.0837	-0.456*	0.211	-0.0932
Ideology of Panel Median	0.452	0.290	0.0836	0.474†	0.284	0.0874
Ideology of Circuit Median	-0.628	0.625	-0.0962	-0.636	0.623	-0.0975
Ideology of Supreme Court Median	0.376	1.046	0.0789	0.429	1.043	0.0903
Lower Court Decision (Favorable Vote)	2.156***	0.217	0.4826	2.169***	0.219	0.4851

Table 2.5 (cont.): Logistic Model of Individual Voting Behavior in the U.S. Court of Appeals (2001-2009)

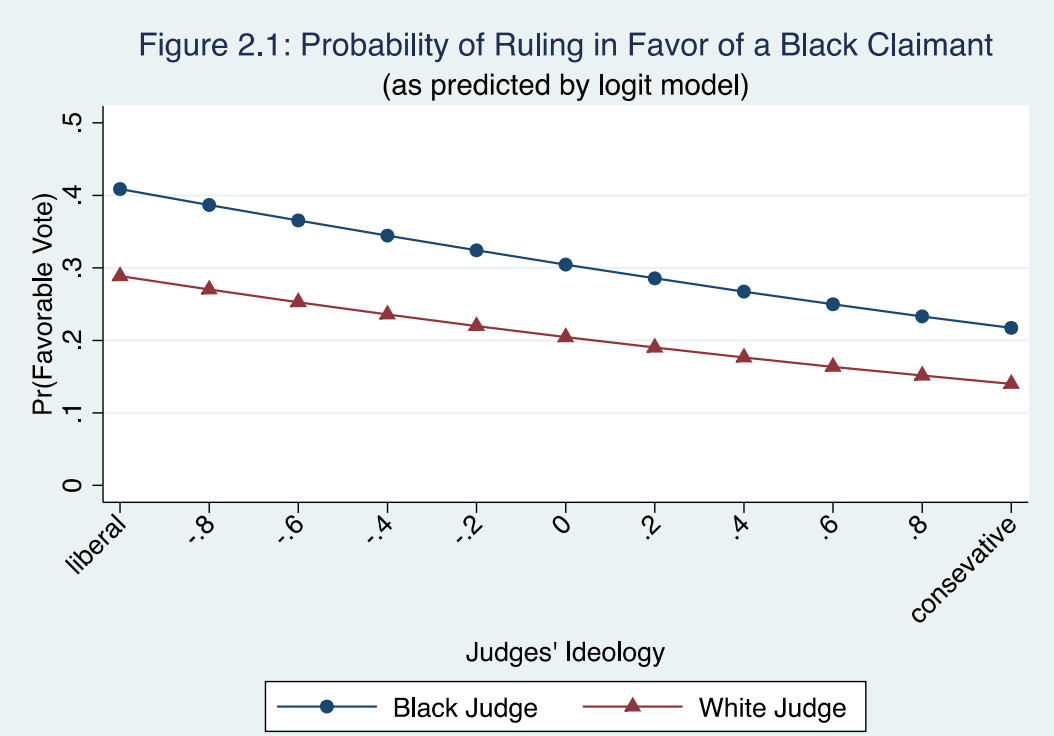
Case Facts						
Amicus Curiae Brief	0.750**	0.265	0.1509	0.807**	0.265	0.1640
Discrimination Case	-0.036	0.138	-0.0061	-0.044	0.137	-0.0076
Hostile Work Environment Case	0.373*	0.161	0.0688	0.364*	0.161	0.0669
Latino Claimant	0.604*	0.277	0.1162	0.651*	0.289	0.1260
Black Claimant	-0.178	0.172	-0.0310	-0.252	0.178	-0.0440
Asian Claimant	-0.250	0.375	-0.0401	-0.241	0.372	-0.0387
Middle Eastern Claimant	0.135	0.348	0.0239	0.108	0.340	0.0190
American Indian Claimant	-2.912***	0.718	-0.2082	-2.729***	0.757	-0.2046
Circuit Norms						
1st Circuit	-2.078***	0.609	-0.1962	-2.050***	0.607	-0.1947
2nd Circuit	-0.282	0.417	-0.0448	-0.214	0.410	-0.0346
3rd Circuit	-1.091*	0.463	-0.1349	-1.077*	0.452	-0.1336
4th Circuit	-1.162*	0.494	-0.1439	-1.122*	0.492	-0.1404
5th Circuit	-0.507	0.559	-0.0765	-0.475	0.551	-0.0722
6th Circuit	-0.440	0.413	-0.0674	-0.383	0.407	-0.0595
7th Circuit	-1.831***	0.468	-0.2471	-1.769***	0.459	-0.2402
8th Circuit	-0.954*	0.470	-0.1365	-0.917*	0.463	-0.1320
10th Circuit	-0.171	0.472	-0.0281	-0.129	0.464	-0.0214
11th Circuit	-1.549**	0.592	-0.1728	-1.489*	0.586	-0.1687
D.C. Circuit	-1.251*	0.582	-0.1549	-1.150*	0.575	-0.1461

Table 2.5 (cont.): Logistic Model of Individual Voting Behavior in the U.S. Court of Appeals (2001-2009)

Yearly Controls						
2002	0.294	0.405	0.0543	0.287	0.404	0.0529
2003	-0.405	0.323	-0.0642	-0.404	0.322	-0.0640
2004	-0.077	0.383	-0.0130	-0.086	0.381	-0.0146
2005	-0.155	0.521	-0.0256	-0.138	0.525	-0.0229
2006	-0.227	0.257	-0.0370	-0.237	0.254	-0.0384
2007	-1.190***	0.302	-0.1527	-1.201***	0.300	-0.1536
2008	-0.511	0.403	-0.0773	-0.503	0.398	-0.0761
2009	-0.238	0.590	-0.0384	-0.269	0.589	-0.0430
Constant	0.095	0.806		0.059	0.797	
N		3,985			3,985	
Log pseudo likelihood		-1919.4224			-1914.0917	
% Correctly Predicted		78.17%			78.09%	

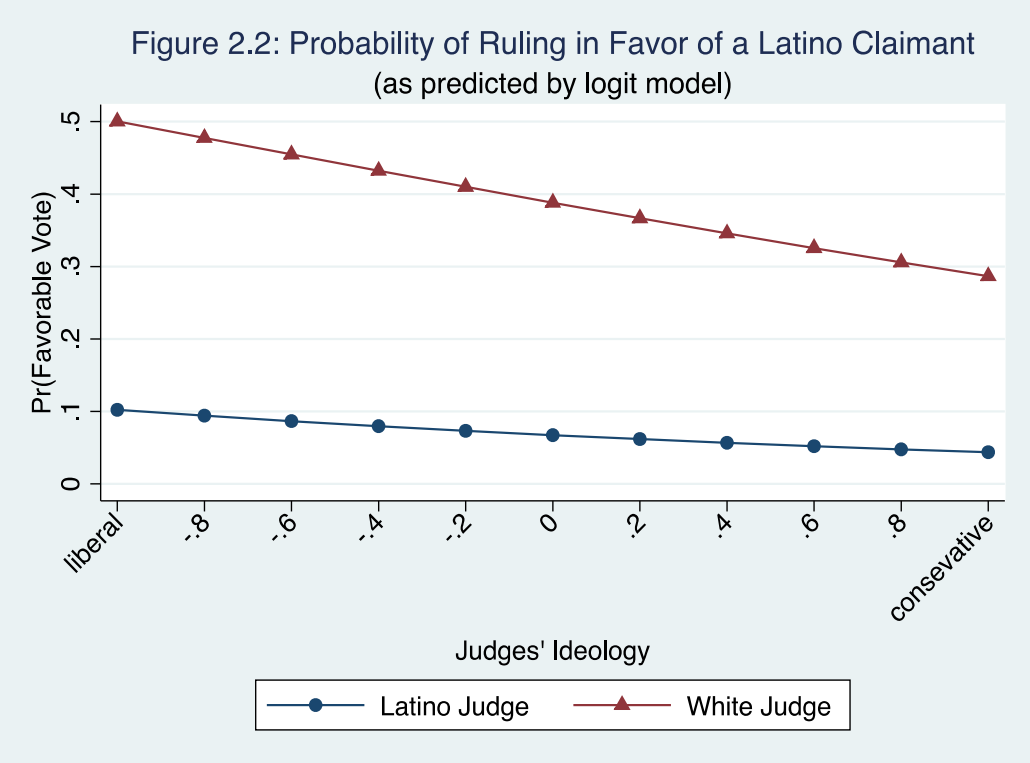
† $p < .10$, two-tailed; *$p < .05$, two-tailed; **$p < .01$, two-tailed; ***$p < .001$, two-tailed.
Note: The dependent variable is a vote in favor of racial and ethnic minorities. Both models cluster around the individual judge (305 clusters).

Overall, the results demonstrate only partial support for Hypothesis 1, which states that minority judges will be more likely to rule in favor of co-ethnic or co-racial claimants in Title VII employment discrimination claims. Interestingly, the results show that descriptive representatives are not monolithic in their individual voting behavior. In model 1, for example, *African American Judge* is significant and positive ($p < .10$), suggesting that Black judges are more likely than non-Black judges to rule in favor of the claimant more generally. The presence of an African American judge versus a non-Black judge, moreover, has a substantive influence on voting behavior, increasing the probability of a favorable ruling by 6 percent. The propensity to rule in favor of the claimant is also conditioned by the presence of co-racial cues. In model 2, for example, *African American*Black Claimant* is significant and positive ($p < .10$), suggesting that African American judges are more likely than non-Black judges to rule in favor of other Black claimants. Even after controlling for judges' ideology and holding all other independent variables at their respective means and modes, Figure 2.1 illustrates clear differences in voting behavior between Black and white judges. When both sets of judges are held at their most liberal ideologies (-1), the probability of an African American judge ruling in favor of a Black claimant is 40.87 percent versus 28.87 percent for white judges. As the ideology of African American and white judges become more conservative (1), the probability decreases to 21.72 and 14.01 percent, respectively. Although both groups are impacted by ideology, the gap in the predicted probability between African American and white jurists implies that race and ethnicity have an independent effect on the voting behavior of judges. In all, these findings provide empirical support for the argument that Black claimants serve as important racial cues that lead to more favorable votes.



The voting behavior of Latino judges contrasts sharply with the voting behavior of African American judges. In model 1, for example, *Latino Judge* is significant and negative ($p < .05$), suggesting that Latino judges are less likely than non-Latino judges to rule in favor of the claimant. The discrete change in the predicted probability further illustrates this finding, as the presence of a Latino judge decreases the probability of ruling in favor of the claimant by about 15 percent. The apparent lack of support for the claimant is also reinforced by the presence of co-ethnic claimants. In model 2, for example, *Latino Judge*Latino Claimant* is significant and negative ($p < .05$), suggesting that Latino judges are less likely than non-Latino judges to rule in favor of a co-ethnic claimant. After controlling for judges' ideology and holding all other independent variables at their respective means and modes, Figure 2.2 shows important differences in

the individual voting behavior between Latino and white jurists. When both sets of judges are held to their most liberal ideologies (-1), the probability of a Latino judge ruling in favor of a co-ethnic claimant is 10.22 percent, which is 39.81 percent less than the probability of a white judge ruling in favor of a Latino claimant. As judges' ideologies become more conservative (1), however, the probability of a favorable vote decreases to 4.37 percent and 28.67 percent for Latino and white judges, respectively. While these results run counter to my hypothesis, the results are similar to previous research that finds Latino are less likely to rule in favor of Latino defendants at the state level (Holmes et al., 1993). Overall, the findings clearly demonstrate that the presence of a Latino claimant can have a substantive and independent effect on Latino voting behavior, regardless of Latino judges' ideological positions.



Given the small number of Latino judges in the analysis, further investigation also demonstrates that the results are not necessarily generalizable across all Latino judges in the U.S. Courts of Appeals. Table 2.6, for example, provides a list of Latino judges and their voting behavior towards Latino claimants. Of the 13 Latino appellate-court judges in the dataset, the table demonstrates that only 5 Latino judges have ever made a decision involving a Latino claimant. More specifically, these judges include 2 judges appointed by a Democratic president (J. Fortunato Benevides; J. Carlos F. Lucero) and 3 judges appointed by a Republican president (J. Emilo M. Garza; J. Edward C. Prado; J. Juan R. Torruella). In line with the results in the fully specified model (Table 2, model 2), the majority of Latino judges, both Democrat and Republican in partisanship, tend to rule against Latino judges. In fact, Emilio M. Garza, a Republican from the 5th Circuit Court of Appeals in Texas, is the only judge to have a more favorable record towards other Latinos in discrimination cases. In addition to generalizability issues, Table 3 shows that Judge Carlos F. Lucero, a Democrat from the 10th Circuit Court of Appeals in Colorado, is an important outlier driving the results in the fully specified model (Table 2.5, model 2). In comparison to the other four judges, Judge Carlos F. Lucero was involved in 20 of the 35 decisions, or 57 percent of the total observations. Of these 20 decisions, Judge Carlos F. Lucero ruled against 11 different individual Latino claimants 100 percent of the time.[27]

[27] Given this outlier, I added a dummy variable for Judge Lucero to the full model. The results demonstrate no substantive changes with regards to Latino voting behavior (see Table A.3 in Appendix A).

Table 2.6: The Voting Behavior of Latino Judges towards Latino Claimants by Partisanship

	Unfavorable Vote	Favorable Vote	Total
Appointed by Democratic President			
Fortunato Benavides	2 (66.67%)	1 (33.33%)	3 (100%)
Carlos F. Lucero	20 (100%)	0 (0%)	20 (100%)
Appointed by Republican President			
Emilio M. Garza	1 (25%)	3 (75%)	4 (100%)
Edward C. Prado	1 (100%)	0 (0%)	1 (100%)
Juan R. Torruella	6 (85.7%)	1 (14.28%)	7 (100%)
Total	30 (85.71%)	5 (14.29%)	35 (100%)

Note: Percentages in parentheses reflect row percentages.

Why are Latinos less likely to rule in favor of other Latino claimants in Title VII employment discrimination cases? The results from this analysis suggest that experiences with discrimination may work differently for Latino judges. In fact, one explanation suggests that socialization, or attempts to fit in with the dominant group in the courts, will actually cause racial and ethnic minorities or out-groups to behave more conservatively towards other co-racial or co-ethnic members. This argument is reinforced by work that focuses on gender group roles in the workplace, which finds that women managers have a tendency to take on more masculine behavior in order to achieve upward mobility (Wood, 1997). Consequently, women managers are more likely than their male peers to distance themselves and treat other women with forceful tactics (Wood, 1997; Van de Vliert 1994). Latino judges, who face similar acclimation effects, may therefore have

similar responses to co-ethnics when they come to the federal courts to appeal or defend their case.

The next step in the analysis is to examine whether the individual voting behavior of Latino and African American jurists continues to hold once the social composition of the panel is taken into account. Table 2.7 presents models 3 and 4, which examine the voting behavior of African American and Latino judges in Title VII cases when panels are comprised of majority-white and majority minority panels. Overall, the results show partial support for Hypothesis 2, which states that the presence of a co-racial or co-ethnic claimant will condition the behavior of minority judges when they are randomly assigned to majority-white panels. In model 3, for example, *Latino Judge (two white colleagues)* is significant and negative ($p < .001$), suggesting that Latino judges sitting on majority white panels are less likely to rule in favor the claimant. This effect, moreover, is quite substantive, as the addition of a Latino judge to an all-white panel decreases the probability of a favorable vote by 15 percent. This less-than-favorable behavior towards claimants is also heightened by the presence of co-ethnic claimants. For example, *Latino Judge (two white colleagues)*Latino claimant* is significant and negative ($p < .10$), suggesting that Latino judges sitting on majority-white panels are less likely to rule in favor of other Latino claimants. After controlling for the ideology and holding all other variables at their respective means and modes, Figure 2.3 shows important differences between Latino and white judges. When holding both sets of judges to their most liberal ideologies (-1), the probability of voting in favor of a Latino claimant is only 2.12 percent for Latino judges sitting on majority-white panels and 54.98 percent for white judges sitting on all-white panels. As the judges' ideologies become more conservative (1),

however, the probability decreases to 0.67 percent and 27.62 percent for Latino and white judges, respectively. In all, these findings demonstrate that Latino judges continue vote against other Latino claimants in Title VII cases, even when the social composition.

Table 2.7: Logistic Model of Individual Voting Behavior Across Different Panel Compositions in the U.S. Court of Appeals (2001-2009)

	Model 3 (Constrained)			Model 4 (Full Model)		
Variables	**Coef.**	**Robust *SE***	**Discrete Change (min→max)**	**Coef.**	**Robust *SE***	**Discrete Change (min→max)**
Panel Effects						
Latino Judge (two white colleagues)	-1.984***	0.506	-0.1833	-1.535***	0.448	-0.1594
Latino Judge (two white colleagues)*Latino Claimant	---	---	---	-2.057†	1.085	-0.1752
Black Judge (two white colleagues)	0.458†	0.246	0.0836	-0.439	0.328	-0.0639
Black Judge (two white colleagues)*Black Claimant	---	---	---	1.284**	0.421	0.2710
Black Judge (one Black colleague)	0.230	0.480	0.0402	0.300	0.456	0.0531
White Judge (one Latino colleague)	-1.674***	0.330	-0.1773	-1.246***	0.353	-0.1460
White Judge (one Latino colleague)*Latino Claimant	---	---	---	-1.960*	0.799	-0.1740
White Judge (one Black colleague)	0.486*	0.224	0.0875	-0.138	0.263	-0.0218
White Judge (one Black colleague)*Black Claimant	---	---	---	0.901*	0.394	0.1759
White Judge (two Black colleagues)	-0.283	0.715	-0.0427	-0.233	0.696	-0.0354
Female Judge (two male colleagues)	0.266	0.247	0.0463	0.321	0.241	0.0562
Female Judge (one Female colleague)	0.852***	0.232	0.1672	0.919***	0.227	0.1811
Male Judge (one female colleague)	0.352†	0.182	0.0614	0.406*	0.182	0.0709
Male Judge (two female colleagues)	1.045**	0.348	0.2152	1.133***	0.327	0.2350

Table 2.7 (cont.): Logistic Model of Individual Voting Behavior Across Different Panel Compositions in the U.S. Court of Appeals (2001-2009)

Background Characteristics						
Born in South	0.080	0.174	0.0133	0.060	0.176	0.0099
Age of Judge	-0.001	0.009	-0.0105	-0.001	0.008	-0.0116
Former Prosecutor	-0.150	0.154	-0.0245	-0.166	0.149	-0.0268
Ivy League Education	-0.131	0.180	-0.0211	-0.142	0.180	-0.0225
Designate Judge	-0.250	0.270	-0.0384	-0.258	0.266	-0.0392
Attitudes & Strategic Interaction						
Judge Ideology	-0.549*	0.239	-0.1087	-0.582*	0.234	-0.1145
Ideology of Panel Median	0.759*	0.308	0.1314	0.791**	0.302	0.1353
Ideology of Circuit Median	-0.570	0.685	-0.0837	-0.497	0.698	-0.0721
Ideology of Supreme Court Median	0.445	1.091	0.0904	0.663	1.109	0.1367
Lower Court Decision (Favorable Vote)	2.452***	0.213	0.5395	2.490***	0.219	0.5462
Case Facts						
Amicus Curiae Brief	0.238	0.256	0.0415	0.410	0.256	0.0739
Discrimination Case	-0.044	0.136	-0.0072	-0.093	0.135	-0.0152
Hostile Work Environment Case	0.401*	0.175	0.0717	0.361*	0.174	0.0635
Latino Claimant	0.629*	0.260	0.1174	0.857**	0.291	0.1650
Black Claimant	-0.055	0.168	-0.0090	-0.328†	0.186	-0.0549
Asian Claimant	-0.360	0.404	-0.0535	-0.306	0.390	-0.0458
Middle Eastern Claimant	0.544	0.367	0.1026	0.359	0.347	0.0642

Table 2.7 (cont.): Logistic Model of Individual Voting Behavior Across Different Panel Compositions in the U.S. Court of Appeals (2001-2009)

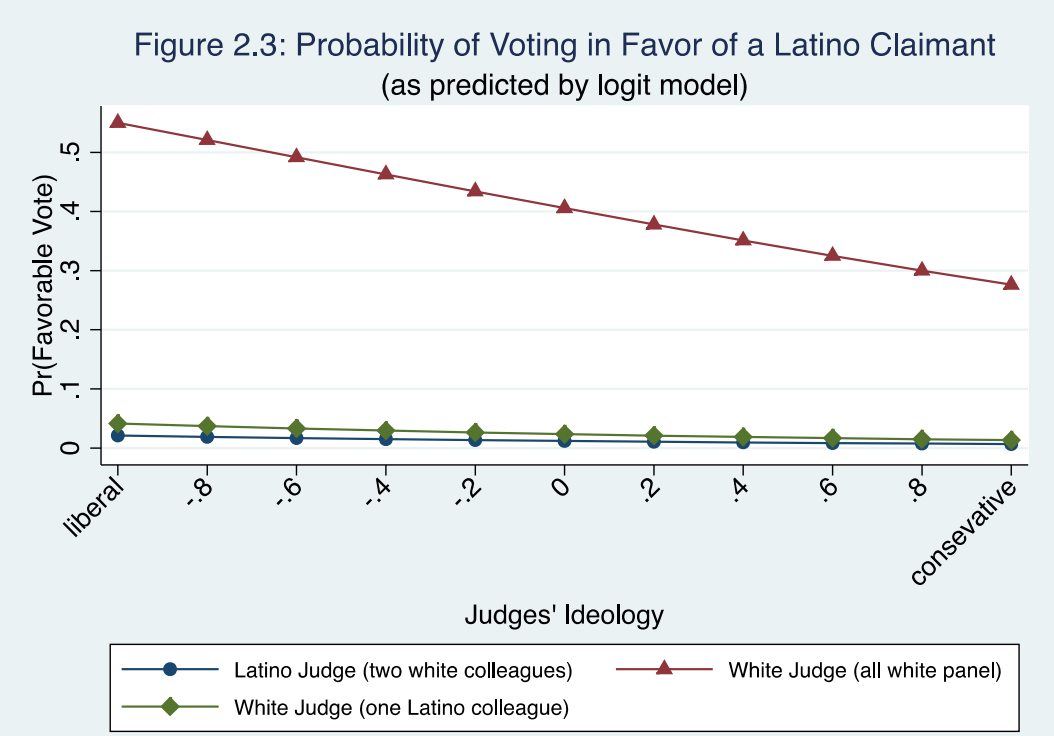
American Indian Claimant	-3.234***	0.748	-0.2014	-2.823***	0.783	-0.1933
Circuit Norms						
1st Circuit	-1.897**	0.681	-0.1787	-1.785**	0.695	-0.1717
2nd Circuit	-0.438	0.475	-0.0637	-0.118	0.462	-0.0186
3rd Circuit	-1.682***	0.483	-0.1644	-1.588***	0.466	-0.1580
4th Circuit	-1.769**	0.581	-0.1753	-1.637**	0.571	-0.1665
5th Circuit	-0.788	0.623	-0.1052	-0.771	0.611	-0.1024
6th Circuit	-1.077*	0.507	-0.1326	-0.826†	0.482	-0.1079
7th Circuit	-2.606***	0.562	-0.3097	-2.432***	0.545	-0.2915
8th Circuit	-1.564**	0.538	-0.1907	-1.412**	0.527	-0.1753
10th Circuit	-0.095	0.546	-0.0153	0.106	0.529	0.0178
11th Circuit	-2.153**	0.678	-0.1933	-1.981**	0.670	-0.1841
D.C. Circuit	-2.062**	0.667	-0.1973	-1.787**	0.654	-0.1811
Yearly Controls						
2002	0.358	0.448	0.0647	0.328	0.457	0.0584
2003	-0.465	0.325	-0.0698	-0.427	0.336	-0.0640
2004	0.039	0.393	0.0064	-0.027	0.400	-0.0043
2005	-0.017	0.520	-0.0028	0.038	0.530	0.0062
2006	-0.205	0.276	-0.0321	-0.253	0.270	-0.0389
2007	-1.204***	0.304	-0.1465	-1.264***	0.302	-0.1500
2008	-0.713	0.436	-0.0977	-0.703†	0.416	-0.0957

Table 2.7 (cont.): Logistic Model of Individual Voting Behavior Across Different Panel Compositions in the U.S. Court of Appeals (2001-2009)

2009	-0.348	0.619	-0.0522	-0.530	0.621	-0.0749
Constant	0.363	0.835		0.268	0.805	
N		3,930			3,930	
Log pseudo likelihood		-1797.4517			-1774.3258	
% Correctly Predicted		79.80%			79.95%	

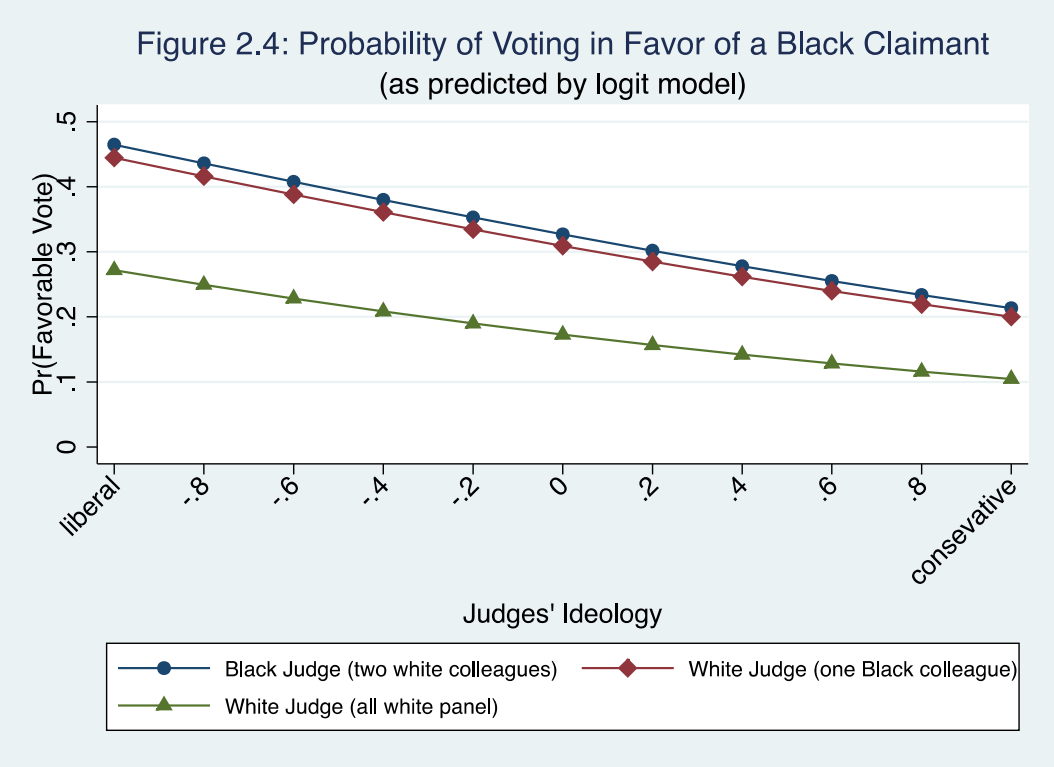
† $p < .10$, two-tailed; *$p < .05$, two-tailed; **$p < .01$, two-tailed; ***$p < .001$, two-tailed.

Note: The dependent variable is a vote in favor of racial and ethnic minorities. Both models cluster around the individual judge (303 clusters).



In comparison to ethnically diverse panels, *Black Judge (two white colleagues)* is statistically significant ($p < .05$). Thus, the results indicate that Black judges, sitting on majority-white panels, increase the probability of a favorable vote by 9 percent. While the findings mirror those found in the model 1, the results also demonstrate that majority-white panels do not suppress the behavior of African American and Latino jurists. In line with expectations, *Black Judge (two white colleagues)*Black Claimant* is significant and positive ($p < .01$). Thus, African American judges sitting on majority-white panels are more likely to rule in favor of Black claimants. The effect, once again, is quite substantive. After controlling for judges ideology and holding all other independent variables at their respective means and modes, Figure 2.4 shows that the probability of ruling in favor of a Black claimant is much higher for African American judges sitting on

majority-white panels than white judges sitting on all-white panels. When Black and white judges are held to their most liberal ideologies (-1), the probability of ruling in favor of a Black claimant is 56.48 percent for African American judges sitting on majority-white panels and 27.18 percent for white judges sitting on all-white panels. In all, this represents a near 30 percent difference in the predicted probability in individual vote outcomes. As the ideology of African American and white judges become more conservative (1), the probability decreases to 21.35 and 10.45 percent, respectively. Once again, the finding with regards to panel effects reinforces the argument that divergence in behavior depends on the presence of a co-racial claimant, even when the racial composition of the panel is taken into account.



Model 4 also tests Hypothesis 3, which states that white judges will be more likely to rule in favor of Black or Latino claimants when they are sitting on racially or ethnically diverse panels. The results in model 4, however, demonstrate only partial support for the hypothesis. For example, *White Judge (one Latino colleague)* is significant negative ($p < .001$), suggesting that the presence of a Latino judge decreases the likelihood that a white judge will vote in favor of the claimant in a Title VII discrimination case. Contrary to Hypothesis 3, though, the findings also indicate that the presence of a Latino judge can also decrease the probability that a white judge will rule in favor of a Latino claimant. After holding all variables at their respective means and modes, Figure 2.3 shows that the probability of a white judge ruling in favor of a Latino claimant is only 4.13 percent at their most liberal ideology score. Given that Latino judges have a tendency to rule against the claimant, these findings suggest that the presence of a Latino judge may ultimately lead to different cues that fail to trigger more favorable decisions among their white colleagues.

The presence of a Black judge on a panel has a much different effect on the white judges' individual voting behavior. In line with previous research that focuses on panel effects, *White Judge (one Black colleague)* is significant and positive ($p < .05$), suggesting that the presence of an African American judge increases the likelihood that a white judge will rule in favor of a claimant. In support of Hypothesis 3, the results also suggest that co-racial cues can increase the probability of a favorable vote among white judges sitting on racially diverse panels. For example, Figure 2.4 illustrates that the probability of ruling in favor of a Black claimant peaks at 44.47 percent, which is nearly as high as African American judges sitting on majority-white panels. While the presence

of a Black claimant can improve the quality of deliberation among African American judges, the results reinforce the argument that racial cues can serve to crystallize issues of race among white judges. In all, these results provide mounting evidence to suggest that Latino and African American can significantly influence their white colleagues on the bench.

In addition to the main independent variables, the fully specified model in Table 2.5 demonstrates that judges' background characteristics significantly influence rulings towards claimants who go to appeal or defend their case. Models 1 and 2, for example, show that *Female Judge* is significant an positive ($p < .05$), suggesting that female jurists are more likely than their male colleagues to rule in favor of the claimant. At the panel level, models 3 and 4 also demonstrate some interesting results. Although *Female Judge (two male colleagues)* is insignificant in the model, *Female Judge (one female colleague)* is significant and positive, suggesting that female jurists rule more favorably once another female colleague is added to a panel. Taken together, these findings diverge from Farhang and Wawro (2004) that find female judges, when on their own, bring a different voice to the bench (see also Boyd et al., 2010). This is not to suggest, however, that female judge do not exert any influence over their male colleagues. In fact, both *Male (one female colleague)* and *Male Judge (two female colleagues)* variables are significant and positive across both models, suggesting that the presence of at least one female judge can significantly influence the voting behavior of their male colleagues.

As expected, and following previous studies on the relationship between attitudes and judicial behavior (Segal and Spaeth, 1993), *Ideology* is also significant and positive across the four models, indicating that judges are less likely to rule in favor of the

claimant as their ideology becomes more conservative. Interestingly, ideology does not have the greatest substantive impact on judicial behavior once background characteristics and other institutional factors are taken into account. Model 2, for example, shows that as attitudes become more liberal, the probability of a favorable ruling increases by 8 percent as judges become more liberal. In all, these results provide further support the contention that background characteristics matter and have an independent and substantive effect on judicial behavior.

Strategic factors and circuit norms are also important for explaining behavior outcomes. *Ideology of the Panel Median* is also significant across the four models. However, the sign of the coefficient is positive, suggesting that judges whose, median judge is ideologically more conservative are more likely to rule in favor of the claimant. This makes intuitive sense given that Democratic judges on a majority-Republican panel can increase the probability of more liberal panel outcomes (Kastellec, 2011, Sunstein et al., 2006). Accounting for more routine cases, *Lower Court Decision (Favorable Vote)* is also significant and positive ($p < .001$). The near 49 percent change in the predicted probability is expected, as the appellate courts rarely overturn lower-court decisions. Several of the circuit variables are also found to be significant and negative in the model. In comparison to the 9th Circuit, therefore, claimants from the 1st, 3rd, 4th, 6th, 7th, 8th, 11th, and D.C. Circuit are less likely to receive a favorable decision. All other circuits demonstrate no significant differences. Overall, these findings make intuitive sense given that the circuits listed above cover many parts of the south and the Midwest where issues of race have dominated the political landscape.

The results also demonstrate that case facts can influence the behavior of judges. For example, *Hostile Work Environment Case* is significant and positive ($p < .05$), suggesting that claimants are more likely than receive a favorable vote in hostile work environmental claims than other kinds of grievances. The results from model 1 also demonstrate that the racial and ethnic minorities are also treated differently. For example, *Latino Claimant* is significant and positive ($p < .05$), but *American Indian Claimant* is significant and negative ($p < .001$). Latino claimants, therefore, are more likely to receive more favorable treatment than other minorities, including Black claimants. American Indian claimants, by contrast, tend to fair much worse, as they are less likely to receive a favorable vote. Overall, this finding may reflect judges' overt skepticism towards particular minority groups, including American Indian claimants and Black claimants who are over-represented in the federal court system (Selmi, 2000-2001).

Conclusion

Over the years, the lower federal courts have become more diverse in their racial and ethnic composition. Not only is racial and ethnic diversity important for establishing a sense of symbolic representation, but it can also lead to more substantive outcomes (Pitkin, 1967). This study examined the latter of the two merits of descriptive representation by focusing on the voting behavior of African American and Latino judges across Title VII employment discrimination claims in the U.S. Courts of Appeals. Following research on the state and lower courts, this study emphasized the role of claimant effects, arguing that the presence of a co-racial or co-ethnic claimant can play an important and mediating role in the behavior of African American and Latino judges.

The results from this study demonstrate that African American and Latino judges are not monolithic in their voting behavior in employment discrimination claims based on race and national origin. African American judges, for example, are more likely to rule in favor of the claimant, especially when a Black claimant is present. Moreover, these results continue to hold once the social composition of the panel is taken into account. While African American judges sitting on majority-white panels are more likely rule in favor of co-racial claimants, the results from this analysis also suggest that Black judges, through mechanisms of deliberation, specialization, and strategic bargaining, can influence the voting behavior of their white-panel colleagues.

In comparison to African American judges, though, the voting behavior of Latino judges is much different. Contrary to expectations, Latino judges have a tendency to rule in the opposite direction by handing down less-than favorable decisions towards co-ethnic claimants, even when they sit on majority-white panels. Interestingly, though, Latino judges continue to wield influence over their colleagues, as the results demonstrate that white judges sitting on ethnically diverse panels are also less likely to rule in favor of the claimant and other Latinos. In all, these differences in voting behavior suggest that discrimination, which is central to understanding voting behavior among minority judges, may work differently for Latinos. While surveys of Latinos lawyers suggest that Latinos in the legal profession may suffer from fewer experiences with discrimination than Blacks (Chavez, 2011), efforts to assimilate into the lower federal courts may ultimately lead to more conservative behavior towards claimants and other Latinos. Indeed, this last argument is supported by work that finds female managers to be less supportive of their female employees (e.g. Williams and Locke, 1999).

These differences in behavior speak directly to scholars who are interested in the relationship between descriptive and substantive representation in the federal courts (Scherer, 2004-2005; Segal, 2000; Songer et al., 1994; Walker and Barrow, 1985). Over the years, the federal courts have made it more difficult to win discrimination cases (Selmi, 2000-2001). Consequently, the number of reversals has been extremely low (Selmi, 2000-2001). African American judges, however, can contribute to the development of Title VII policies by crystalizing issues of race and ethnicity to their panel colleagues. Assuming that African American judges are on the winning side of the panel decision, they will have greater opportunities to write the majority opinion, set the policy agenda, and challenge the content of those opinions that can act as legal barriers to more winnable claims.

The study also provides an added dimension to the study of descriptive representation by examining the more direct impact diversity can have on claimants themselves. In the U.S. Courts of appeals, Blacks claimants are over-represented in cases involving Title VII employment discrimination claims. Moreover, the number of filings has remained quite high, as the Equal Employment Opportunity Commission reported over 35,000 individual race-related claims in 2011 alone. (E.E.O.C., n. d.). The findings from this analysis suggests that African American judges can level the playing field by being more responsive to Black claimants when they go to appeal or defend their case. As Welch, Combs, and Gruhl (1988) suggest, "this level of responsiveness may ultimately ensure that racial and ethnic minorities do not receive harsher treatment than they deserve" (127). Still, Black claimants may continue to face an uphill battle since African American judges continue to be under-represented in the federal courts.

The study of descriptive representation and voting behavior towards specific minority groups prompts further investigation of Latino and African American judicial behavior. In the following chapter, this dissertation will address the following research question: does the presence of African American and Latino judges on an appeals-court panel improve the probability that claimants will win their discrimination claims? Although this study analyzes panel effects in relation to individual voting behavior, a number of studies are beginning to focus on those factors that predict panel outcomes (Kastellec, forthcoming, Boyd et al., 2010; Cox and Miles, 2008; Farhang and Wawro, 2004). While research in this area typically focuses on the social composition of panels, the results from this analysis suggest that the race and ethnicity of the claimant can also play an important mediating role in the behavior of three-judge panels. Indeed, this is an important question because panel outcomes ultimately depend on the cooperation of judges and their panel colleagues. In all, this study provides an important step towards understanding the conditional nature of African American and Latino judicial behavior in the collegial courts.

CHAPTER 3

AFRICAN AMERICAN and LATINO INFLUENCE OVER PANEL OUTCOMES

> *(Justice) Marshall could be a persuasive force just by sitting there. He wouldn't have to open his mouth to affect the nature of the conference and how seriously the justices would take matters of race. ~Justice Antonin Scalia*

Much of the research focusing on descriptive representation in the courtroom examines the individual voting behavior African American and Latino jurists (Collins and Moyer, 2008; Scherer 2004-2005; but see Segal, 2000; Walker and Barrow, 1985) Chapter 2 of this dissertation added to this existing line of research by examining the extent to which the voting behavior of racial and ethnic minority judges are mediated by the presence of co-racial and co-ethnic claimants. The results from the previous chapter demonstrated that Latino and African American judges are not monolithic in their behavior, even when they sit on majority-white panels. While African American judges are more likely to rule in favor of other Black claimants, Latino judges behave much differently by ruling against other Latinos. The results from the previous chapter also indicated that African American and Latino judge could influence their white panel colleagues, as white judges were likely to follow the preferences of their African American and Latino colleagues.

Indeed, these last findings suggest that decision-making in the collegial courts does not occur in a vacuum (Collins and Martinek, 2011). In the U.S. Courts of Appeals, judges sit on rotating three-member panel, where at least two judges must agree with one another to reach a final decision. As policy makers whose decisions can have an important impact on the development of law (Segal and Spaeth, 1993), the ability to form

majority coalitions is especially important. While those in the majority have opportunities to write the majority opinion and shape the direction policy, judges who disagree with their panel colleagues must either dissent or conform to the preferences of the majority. In this regard, the research on individual voting behavior does not fully allow one to understand the extent to which diversity can translate into outcomes that benefit racial and ethnic minorities.

In response to this panel dynamic, a bourgeoning line of research has sought to understand how the racial, ethnic, and gender composition of panels can affect panel outcomes (Farhang and Wawro, 2004, Kastellec, forthcoming; Boyd, Epstein, and Martin, 2010). Although earlier work in this area demonstrates some mixed results with regards to these "panel effects" (Boyd et al., 2004), more recent evidence indicates that favorable panel outcomes depends on the presence of salient policy issues, such as claims based on sex discrimination (Boyd et al., 2010), sexual harassment (Farhang and Wawro, 2010), and affirmative action (Kastellec, forthcoming). Less understood, however, is the role of the other possible factors that may motivate African American and Latino judges to influence their panel colleagues. While the presence of salient policy issues provides one condition, it does not consider the role of "claimant effects," or the influence that co-racial and co-ethnic cues might have on African American and Latino judicial behavior.

In this chapter, I examine how racially diverse and ethnically diverse panels rule towards co-racial and co-ethnic claimants. Following research that focuses on "panel effects," this chapter argues that racial and ethnic minority judges, through their ability to crystallize issues of race and ethnicity, enhance perceptions of policy specialization, and threaten panel consensus, will be able to influence their panel colleagues and determine

the outcome of panel decisions. In addition to these "panel effects," the ability to influence panel outcomes may also depend on "claimant effects" or the presence of racial or ethnic cues. Not only will the presence of a co-racial or a co-ethnic claimant improve the quality of deliberation among minority judges, but their presence will also enhance perceptions of policy specialization that will lead to panel decisions that favor the claimant.

To test this argument, I analyze panel effects using an original dataset that captures a universe of Title VII employment discrimination cases based on race and ethnicity between 2001 and 2009. The dataset is unique in that it provides one of the first opportunities to control for the racial and ethnic background characteristics of the judges as well as the race and ethnicity of the claimant. This chapter finds that African American judges have much greater success at persuading their panel colleagues when a co-racial claimant is present. The presence of a Latino judge on a panel, however, decreases the probability that a claimant will win their discrimination claim, regardless of the race and ethnicity of the appellant. In all, the findings have important implications for the relationship between descriptive and substantive representation. Contrary to research that suggests that racial and ethnic minorities suffer from a "paradox of representation" (Lublin, 1997; see also Preuhs, 2006; Bratton and Haynie, 1999; Hawkesworth, 2003), descriptive representatives who operate in small-groups have greater opportunities to pursue their policy goals and provide more equitable justice to racial and ethnic minorities who come to the bench to defend or appeal their case.

Attitudes and Strategic Interaction

In the U.S. Court of Appeals, judges sit on rotating three-member panels, where at least two judges must agree in order to reach a final decision. The institution of majority rule plays an important role in the policy making process. Those belonging to the majority coalition are not only awarded with the opportunity to write the majority opinion and set the policy agenda of the court (Maltzman and Whalbeck, 2004), but, through the interpretation of law, they are also given the chance to modify, completely change, or even create new legal precedent (Segal and Spaeth, 1993, 2002). The ability to set legal precedent, moreover, is quite expansive, as their jurisdictions cross state lines and regional territories, such as Puerto Rico and Guam. Judges who disagree with their panel colleagues, on the other hand, may opt to write a separate dissenting opinion, apart from the majority. Although this dissenting opinion may ultimately affect the legitimacy of the opinion by contributing to the "market place of ideas" (Hettinger et al., 2003: 217), it does not carry the same precedential value as the majority opinion.

This institutional dynamic has led several researchers to an examination of "panel effects" or "intra-panel dynamics of circuit-court judges who seek to persuade or otherwise influence their colleagues" (Cross, 2007: 148). The dominant research focusing on judicial behavior assumes that judges are single-minded seekers of policy. Perhaps the most prominent explanation of judicial behavior is the attitudinal model. The attitudinal model holds that the judges decide disputes in light of the facts of the case vis-à-vis the ideological attitudes and values of the justices (Segal and Spaeth, 2002: 86). Thus, judges vote according to their most sincere preferences by "supporting the case outcomes and doctrines they most prefer" (Baum, 1997: 90). In other words, "conservative judges vote

the way they do because they are conservative and liberal judges vote they way they do because they are liberal" (Segal and Spaeth, 2002: 86). Support for the attitudinal model is well documented, especially in its ability to predict the voting behavior of appellate-court judges (Segal and Spaeth, 1993, 2002). In more recent years, it has also been utilized to explain Appeals Court decisions to reverse lower court rulings (Hettinger et al., 2006) and write separate dissenting opinions, apart from the majority (Hettineger et al., 2004a).

In the context of panel effects, the model predicts that panel outcomes largely depend on the partisan or ideological balance of the panel. Take for example, the Black's (1948) median voter theorem, which predicts that the ideological middle will determine the outcome of panel decisions. This argument assumes that judges' decisions are independent of one another and that each vote is of equal value. On a two-dimensional ideological space, it also assumes that judges' policy preferences are "single peaked" in that each judge has a most-preferred policy outcome and that the utility for each judge declines as one moves further away from their ideal point. Based on these assumptions, the theory presumes that the judge representing the ideological middle will have no need to compromise since her panel colleagues will prefer the policy preferences of the median judge to those who are more ideologically distant. Thus, a panel consisting of two Democratically-appointed judges and one Republican-appointed judge is expected to render a 2-1 majority vote, with the Republican judge filing a separate dissenting opinion. Under this circumstance, judges are not subject to persuasion.

To the extent that the ideological middle can predict outcomes, most research has focused on the Supreme Court. As Martin and Quinn (2005) suggest, "Black's Median

Voter Theorem now figures prominently and crucially in a wide array of research of the Court" (1278). Not only can the median justice explain voting behavior and panel outcomes (Whalbeck, 1997), but it can also explain the assignment of the majority opinion and how justices control the policy agenda (Epstein and Knight, 1998; Murphy, 1964; Bonneau, Hammond, Maltzman, and Whalbeck, 2007). However, more recent work demonstrates that the median voter may not figure as prominently in the U.S. Courts of Appeals as Martin and Quinn (2005) and others suggest (see also Epstein, Knight, and Martin, 2003). For example, Collins and Moyer (2008) find that the panel median can influence the voting behavior of her panel colleagues. At the same time, Cross (2007) finds that the median voter theorem "appears entirely inapplicable to circuit courts" after controlling for institutions that place important constraints on judicial behavior.

Decision-making in the collegial courts, however, rarely occurs in a vacuum (Collins and Martinek, 2011). From the moment a panel receives a case to the moment judges reach their final decisions, judges have several opportunities to interact with one another, bargain, and make compromises (Epstein and Knight, 1998: 58). Given this level of interaction, proponents of the strategic interaction model contend that judges are rational actors whose "ability to achieve goals depends on the consideration of the preferences of other actors, the choices they expect others to make, and the institutional context in which they act" (Epstein and Knight 1998: 10). Faced with both internal and institutional constraints, therefore, judges are understood to be "policy maximizers," as they rank their policy preferences according to their utility and attempt to approximate their most desirable outcomes.

Although support for the strategic account of voting behavior is well documented on the Supreme Court (e.g. Epstein and Knight, 1998; Maltzman and Spriggs, and Wahlbeck, 2000; Hammond, Bonneau, and Sheehan, 2005), our understanding of the strategic model is far from extensive on the U.S. Courts of Appeals. In particular, this research highlights smaller group panels and the intermediary role the Appeals Courts play in the federal court system. For example, Collins and Martinek (2011), show that judges' moderated ideology, measured as the ideological mean of their colleagues, is significantly correlated with individual votes. Still, much of this research has a tendency to focus on intra-branch relations and the extent to which judges are constrained by higher court authorities. For example, Songer, Segal, and Cameron (1994) find that the appellate courts tend to be congruent with the decisions of the Supreme Court. Once decisions move away from the preferences of the Supreme Court, judges can act strategically by "whistle blowing" on their panel colleagues by filing a separate dissenting opinion (Cross and Tiller, 1998).

In addition to the Supreme Court, Appellate Court judges are also held to more internal constraints within the circuit. Judges dissatisfied with a panel's decision may wish to initiate a court *en banc*, which has the power to collectively overturn a panel's decision. For example, Van Winkle (1997) finds that judges are more likely to file a separate dissenting opinion when the ideological preferences of the majority panel are not congruent with the preferences of the circuit. However, Hettinger et al. (2004a), in their comparison of both attitudinal and strategic models, find the strategic account does not have any significant impact on the decision to dissent from the majority panel even when it's most advantageous. In this regard, Collins and Martinek (2011) contend that the

strategic model may be less applicable in the U.S. Courts of Appeals since judges have larger workloads and, thus, less time to consider cases strategically (184). By focusing on the intermediary courts in my analyses, I am able to test whether judges act as strategic actors.

Panel Effects and Small Group Theory

Another argument in the literature focuses on the social and psychological aspects of small group interaction. Small group theory generally holds that the way judges relate to one another affects their behavior on the court (Ulmer, 1971). Different from the strategic interaction model, it relaxes the assumption that judges are single-minded seekers of policy, arguing that judges are also motivated by non-policy goals, such as personal standing with court audiences, career, and collegiality on the court (see Baum, 1997). Although non-policy goals may be important for achieving more distant policy-related goals, the content of legal policy may not necessarily be the most proximate goal of every judge (Baum 1997: 16-17). For example, judges who prioritize collegiality and adherence to circuit norms may wish to conform to the panel majority despite having some disagreement over policy. Thus, judges can either moderate or completely change their policy positions in order to achieve non-policy related goals (Howard 1978).

Small group theory has been particularly useful in understanding how group roles can influence individual judicial behavior (Collins and Martink, 2011; see also Atkins 1973; Ulmer 1971; Atkins and Zavoina, 1974; Haynie 1992; Klein and Morrisoe, 1999). This research contends that judges often conform to the preferences of judges in leadership positions. For example, Hettinger (2006) finds that the presence of a chief judge increases the probability of reversing a lower-court decision. Conversely, judges

who are either new or temporary may also be more susceptible to collegial influence. For example, Hettinger et al. (2004b) find that freshman judges are less likely to write separate dissenting opinions apart from the majority panel. Collins and Martinek (2011) also demonstrate that while designate judges, who act as temporary judges in the service of the Appeals Courts, are no more variable in their behavior than appellate-court judges, they are more likely to conform to the preferences of their panel colleagues.

Researchers also demonstrate that judges in less-than-advantageous positions or panel outliers can influence panel outcomes. The deliberative process provides one possible mechanism of panel influence. According to this view, "judges simply take each other's opinion seriously in the deliberative process and can be swayed by an articulate and well-reasoned argument from a colleague with a different opinion" (Carp and Stidham, 1991: 176; see also Cross 2007: 154-155; Edwards 2003: 1656-61; Sunstein et al. 2006: 73). Work focusing on the social psychology of small groups, for example, demonstrates that heterogeneous viewpoints can play an important role in the ability to change the quality of discussion and influence outcomes. Not only can divergent interests lead to a greater exchange of information (Sommers, 2006: 597; Phillips and Loyd, 2006), but it can also cause those in the majority to articulate minorities' views more carefully (Sommers, 2006; Antonio et al., 2004) as well as convince others in the majority to support the minority position (Moscovisi, Lage, and Naffrechoux, 1969). Since informal norms of the court require that judges on the U.S. Courts of Appeals take each other's opinions seriously (Cross, 2007), a similar intra-personal dynamic may also occur among judges once in conference.

The second mechanism of panel influence entails external processes that emphasize the role of strategic bargaining. This argument maintains that judges in the minority position can influence panel outcomes by threatening the norm of consensus, which is considered to be an important goal of appellate-court judges (Farhang and Wawro, 2004). In the U.S. Courts of Appeals, decisions are overwhelmingly unanimous, as the number of dissents average approximately 6 to 8 percent (Farhang and Wawro, 2004: 306). The reasons for consensus are straightforward. Not only does panel consensus establish a unified front on the interpretation of law, but it also establishes a sense of institutional legitimacy, which is necessary for the execution of court orders by other governmental entities (Farhang and Wawro, 2004).[28] In addition to ensuring panel consensus, judges may also wish to modify their positions in order prevent their decisions from being overturned (Baum, 1997). For example, Songer, Segal, and Cameron (1994) find that the appellate courts tend to be congruent with the decisions of the Supreme Court (but see Cross and Tiller 1997). Similarly, Hall (2009) finds that panels consisting of three judges appointed by Democrats quintupled the chances of the Supreme Court overturning lower-court decisions. Van Winkle (1997) also finds that judges are more likely to file a separate dissenting opinion when the ideological preferences of the majority panel are not congruent with the preferences of the circuit. To avoid reversal of the panel's decision, the presiding judge may, therefore, choose to select a more

[28] Furthermore, unanimity may be also explained by other factors, such as workload (e.g. Atkins and Green, 1976), coercive consensus norm (Atkins and Green, 1976; Atkins, 1973), organizational loyalty, and the loneliness of dissent (Atkins and Green, 1976; Farhang and Wawro, 2004: 306).

ideologically distant judge to write the majority opinion in order to satisfy the preferences of the circuit and the Supreme Court.

It is important to note, however, that it is difficult to show which mechanisms are at play, especially since judges' arguments made during conference are generally not available to the public (Kastellec, forthcoming; but see Owens and Black, 2009). Still, research generally shows that judges are able to influence panel outcomes when it comes to both the partisanship and social composition of the panel. For example, the presence of a Democrat on a majority-Republican panel can significantly increase the probability that a panel will rule more liberally (Revesz 1997; Cross and Tiller 1998; Sunstein et al. 2006; Kastellec 2011). However, Kastellec (2011) notes that panel effects are not consistent over time, demonstrating that panel effects have a greater effect when the ideological preferences of higher court authorities favor judges in the minority position (see also Kastellec, 2007). Farhang and Wawro (2004, 2010) also show that the presence of a female judge increases the probability that a panel will rule in favor of a claimant across employment discrimination and sexual harassment cases (see also Peresie, 2005). Finally, Boyd, Epstein, and Martin (2010) extend this research by comparing the ability to influence across salient and non-salient cases. Similarly, they find gender to increase the likelihood that claimants will win their case across gender-specific policies.

Racial and Ethnic Diversity, Influence, and Panel Outcomes

Following small group theory, there is good reason to expect that racial and ethnic compositions matter for understanding influence and panel outcomes. There are three reasons why racial and ethnic minority judges may be able to influence their panel colleagues: the ability to persuade judges on the merits, their mere presence, and the

ability to threaten panel unanimity. Following research that focuses on internal mechanisms of deliberation, minority judges, given their unique backgrounds and experiences, are theorized to crystallize un-crystalized interests (Mansbridge, 1999). For example, Mansbridge (1999) describes how Carol Moseley-Braun, the only African American member of the U.S. Senate at the time, was able to kill an amendment calling for the renewal of a design patent featuring the Confederate flag. In this instance, her objection to the amendment not only crystallized the issue of race, but it also created a signal to other members of the Senate, which was enough to persuade her colleagues to reverse their positions. The ability to crystalize issues may also apply to the courts. Speaking for a unanimous, all-male court, for example, Sandra Day O'Connor argued that, "a victim of sexual harassment need not suffer a nervous breakdown to sue her employer" (see *Harris vs. Forklift Systems, Inc*., 1993). Prior to the Supreme Court's decision, precedent required that women must suffer a material a psychological damage to have standing to sue.

The presence of an African American or Latino judge can also play an important role in the behavior of their white colleagues. According to one line of research, judges rely on cues for information and show greater deference to judges who are perceived to be more credible or expert (see Atkins, 1974; Klein, 2003). In the context of race and ethnicity, a similar outcome may also occur, as white judges may also defer their judgment to African American and Latino judges when they are presented with policy issues affecting racial and ethnic minorities. This argument, moreover, is reinforced by the vast number of issue domains that are presented before the court and the tendency for judges to specialize in different areas of law (Atkins 1974). On the other hand, diverse

panels may also improve the quality of deliberation of white judges. For example, Sommers (2006), in his study of jury deliberations, examines the behavior of white and Black jurors when a Black defendant is before the court. After placing two Black jurors on an majority-white panel, the author finds that white jurists were not only more lenient towards Black defendants, but that they were also more likely to cite more case facts, make fewer factual errors, and appeal directly to Black jurors in the group to validate concerns of racism. As Justice Antonin Scalia once said, "Marshall could be a persuasive force just by sitting there." He wouldn't have to open his mouth to affect the nature of the conference and how seriously the justices would take matters of race (Liptak, 2009). In this case, the mere presence of a minority judge has the potential to serve as important cues that crystallize race or ethnicity across an institutional setting dominated by white jurists.

The desire to select judges who are most "credible" or "expert" may also be reinforced by racial and ethnic stereotypes. For example, Cruz and Molina (2009), in their study of Latina lawyers, find that Latinas in the legal profession are subject to "ethnic oriented roles," such as providing translations or practicing in areas such as immigration law (42). Similar acts of tokenism have also been found by Chavez's (2011) study of Latino lawyers –one of the most comprehensive surveys of Latinos in the legal profession to date. Her study finds that Latino lawyers tend to be used by professional organizations and law firms for more symbolic means. Surrounded by their white colleagues, Latinos lawyers felt as if they were not given a voice and often subject to negative stereotypes (67-69).

The third reason for minority influence over panel decisions is that minority judges can threaten the norm of consensus. Although the actual occurrence of a dissent is an empirically rare event, racial and ethnic minorities are more likely than their white counterparts to dissent from the majority opinion (Hettinger et al., 2003, 2004ab) but no more different than whites to file separate concurring opinions (Hettinger et al. 2004ab). To reconcile these differences, Hettinger et al. (2003) suggest that dissents are more likely than concurrences to trigger ideological responses because they deal with the outcome of a case rather than the "legalities" of the decision (237). Moreover, minority judges may be motivated by the added payoff of initiating the en banc process and overturning a panel's decision by crystallizing race-related issues. Thus, this track record may increase the perception that minority judges are more likely to incur the costs of writing a dissenting opinion when they are at odds with the majority's decision.

Finally, research on panel effects suggests that diverse panels may be conditioned by the presence of policy issues that are important for other racial and ethnic minorities (Boyd et al., 2010). There are two reasons to expect this outcome. First, the presence of salient policy issues may motivate racial and ethnic minority judges to persuade their white colleagues. For example, Goldman (1978-1979) argues that racial and ethnic minority judges will be more empathetic to issues surrounding discrimination policies and inequality in the United States. Second, the presence of salient policy issues dealing with race and ethnicity may heighten perceptions of policy specialization among their white-colleagues (Atkins, 1974). Thus, the presence of salient policy issues may provide African American and Latino jurists with much greater leverage over their panel colleagues.

Indeed, this argument has been supported by research that examines diversity in the appellate courts. For example, Songer et al. (1994) shows that female judges are more likely than their male colleagues to vote in favor of the claimant across job discrimination cases but not policy areas dealing with crime or obesity. Boyd et al. (2010) also demonstrate this conditional effect across panel outcomes. After analyzing 13 different policy areas, they show that the presence of a female judge on a panel can significantly increase the probability that a claimant will win across a single policy area: Title VII sex discrimination claims. Finally, research suggests that panel effects are conditioned by the presence of policy issues that deal exclusively with the group of interest. For example, Farhang and Wawro (2004) find minority jurists to have no significant effect on panel outcomes when it comes to Title VII employment discrimination claims. However, their analysis incorporates all discrimination cases, including cases based on age, religion, and sex where one would not expect to find divergence in voting behavior between minority and white jurists. Although subsequent research on panel effects has narrowed the case selection to more salient policy areas, such as sexual harassment (Farhang and Wawro, 2010) and affirmative action cases (Kastellec, forthcoming), the research focusing on panel effects is relatively young and has yet to fully examine how the racial and ethnic composition can affect panel outcomes across other salient-policy issues, such as discrimination or crime. Based on the above arguments, I expect panels consisting of a single African American or Latino judge to increase the probability of ruling in favor of the claimant. Thus, I hypothesize the following:

H1: *I expect presence of a single African American or Latino judge to increase the probability that panel will rule in favor of the claimant.*

The Role of Claimant Effects

In addition to the presence of salient policy issues that are important to racial and ethnic minorities, the ability to influence panel outcomes may also be conditioned by the presence of claimants who share similar background characteristics. According to Steffensmeier and Demuth (2001), judges may rely on the appellants' background characteristics to facilitate their rulings, including the race, gender, and social class of the appellant (145). Acting as informational cues, the presence of a claimant with similar characteristics may trigger feelings of commonality and highlight experiences with discrimination that can lead minority judges to rule in favor of other co-racial and co-ethnic claimants (Steffensmeier and Demuth, 2001: 145). Goldman (1978-1979) also makes a similar claim, as judges coming from racial and ethnic backgrounds will be empathetic to marginalized groups in society. In all, the above argument not only provides an additional condition to behavior of individual judges, but it also explains how individual judges vote towards co-racial and co-ethnic claimants.

In the context of "panel effects," the presence of co-racial or co-ethnic cues may also condition the likelihood of a racial or ethnic minority winning their claim. According to this view, the presence of a co-racial or co-ethnic claimant will not only trigger feelings of commonality, but also improve the quality of deliberation among African American and Latino jurists. In so doing, African American and Latino jurists can crystallize issues of race and ethnicity and persuade white judges to rule much differently than how they would otherwise. In addition to the presence of salient policy issues, the

presence of co-racial and co-ethnic cues may also enhance the perception that minority judges are policy specialists and cause white judges to defer to the preferences of their African American and Latino colleagues on the bench. Based on this reasoning, I expect the presence of co-racial or co-ethnic claimant to have an important influence on panel outcomes. Thus, I hypothesize the following:

H2: *The likelihood of ruling in favor of a claimant will increase with the presence of a single minority judge and a co-racial or co-ethnic claimant.*

Data and Methods

Following previous research focusing on panel effects (e.g. Farhang and Wawro, 2004, 2010), I am primarily interested in understanding the extent to which racial and ethnic minorities can influence the final outcome of the panel decisions across employment discrimination claims based on race and ethnicity. More specifically, I analyze judicial influence across a universe of Title VII employment discrimination claims based on race and national origin between 2001 and 2009.[29] The total number of

[29] These decisions are collected between 1/1/2001 and 12/31/2009. Since there are few African American judges in the U.S. Courts of Appeals and even fewer Latino judges, I chose to begin the analysis in 2001 to capture all Clinton appointees at the onset of the analysis. The appointments made by president Clinton currently represent one of the greatest efforts to diversify the racial and ethnic composition of the Appeals Court since the Carter administration. President Clinton is responsible for appointing over half of the Latino judges in the U.S. Courts of Appeals, increasing the total number from 5 to 12. Similarly, president Clinton is also responsible for appointing 9 African American judges, increasing the total number of African Americans on the appeals-court bench to 20. I chose to end the analysis in 2009 because it

panel decisions per grievance is 1,274.[30] Of these panel decisions, the dataset captures a representative pool of Latino and African American appellate-court judges who were either in active or senior status during the period of study.[31] Specifically, the dataset includes 13 Latino and 16 African American judges in the U.S. Courts of Appeals. Five additional judges from the U.S. District Courts (1 Latino and 4 African American judges) are also included in the dataset. Serving as a judge designate, these judges acted in a temporary capacity in order to improve the efficiency of the appeals court. All panel decisions are published in the *Federal Reporter* and are accessible through Westlaw.[32]

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represented most current decisions during the time of collection. The dataset does not include any judges appointed by President Obama.

[30] The original dataset includes 1,361 observations. Given the under-representation of racial and ethnic minorities, I was unable to control for majority-minority panels and majority-female panels (44 observations total). The model also excludes American Indian claimants from the analysis since the number of observations is too small (11 observations). Finally, discrimination claims were excluded from the analysis if other information was missing, such as ideology scores (1 observation), and the race and ethnicity of the claimant (31 observations).

[31] Due to regular appointments and judges leaving office, the number of African American and Latino judges has fluctuated throughout the years. Between 2001 and 2009, the mean average of Latino judges sitting in the U.S. Courts of Appeals was approximately 14 (5.07%). The average number of African American judges was approximately 19 (6.88%).

[32] All published decisions involving race and national origin are accessible through the Westlaw Database, using Key Numbers Search. Cases are organized by subject and are located in the Civil Rights Folder. The use of published decisions is well established by judicial scholars (Manning et al. 2004), as they represent

I focus on Title VII claims for several reasons. Following previous scholarship, I expect minority judges to be motivated by the presence of policy issues considered salient to racial and ethnic minorities (Songer et al., 1994). Despite the passage of the Civil Rights Act 1964 (Title VII), discrimination in the workplace continues to be an important problem facing both groups (e.g. Acs and Loprest, 2009; Coleman, 2003; Darity and Mason, 1998; Espino and Franz, 2002; Goldsmith, Hamilton, and Darity, 2006; Kenny and Wissoker, 1994). These experiences, moreover, have translated into divergent attitudes towards discrimination between whites and racial and ethnic minorities (Pew Center, 2005; Pew Hispanic, 2006; Rodriguez, 2008). For example, research focusing on individual voting behavior demonstrates that policy issues, such as discrimination and crime, play an important role in the behavior of descriptive representatives (Songer et al., 1994; Gottschall, 1983). Similarly, Boyd et al. (2010) finds that the gender composition of panels to also be conditioned by salient policy issues after comparing panel effects across different policy areas. Thus, a similar outcome should also occur with panels consisting of either one African American or Latino judge.

In addition to the presence of salient policy issues, a focus on Title VII discrimination claims provides other advantages. For example, Title VII claims based on race and national origin offer judges more discretion to rule their sincere or most preferred preferences (Scherer, 2004-2005), as studies demonstrate circuit court splits over the interpretation of Supreme Court precedent (Green, 1999, p. 997-998; Lanctot,

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cases with higher precedential value and greater discretionary interpretation. This argument, moreover, is reinforced by studies that examine the behavior of judges across published and unpublished decisions (Keele, Malmsheimer, Floyd, and Zhang, 2009; Ringquist and Emmert, 1999).

2000-2001). More specifically, the presence of circuit court splits provide a clear indication that judges are given distinct "choice" situations where extra-legal factors are expected to play a role in the behavior. Otherwise, circuit courts would theoretically arrive at similar interpretations of Supreme Court precedent. Finally, by narrowing the case selection to race discrimination cases in the workplace, I improve the ability to control for legal precedent, as Title VII cases based on work-related discrimination, retaliation, and hostile work environment maintain similar legal frameworks.

The unit of analysis is the panel outcome per grievance or issue.[33] Following Segal (2000), the dataset records all judge decisions made within a case. This includes all judges' decisions made across issues or grievances. In the U.S. Courts of Appeals, for example, individual cases can range from a single dispute, such as a hostile work environment claim to multiple grievances involving discrimination, hostile work environment, and retaliation. If a case included more the one claimant, I recorded all grievances per claimant. A case involving two claimants, for example, rendered four individual votes per judge if both claimants appealed two issues. Since there are the three judges per panel, the total number of observations or votes would be twelve. If, however, multiple claimants were treated as a collective group by the panel of judges in the opinion, all claimants were then recorded as an individual claimant.

This collection strategy offers several advantages. Different from previous research, which tends to aggregate multiple decisions within in a case (e.g. Martinek and

[33] To control for the non-independence of observations, I estimate the model using robust standard errors, clustering around three-judge panels. In doing so, I account for the introduction of stimuli (e.g. case facts, legal precedent) that may vary from one grievance to another.

Collins, 2011), one is able to account for the full range of decisions made by judges in the U.S. Courts of Appeals.[34] Consequently, it is possible to increase the number of observations per judge and, thus, the number of decisions made by under-represented groups, such as racial and ethnic minority judges. Second, one is able to account for the different types of discrimination claims, such as retaliation, discrimination, and hostile work environment, brought before the court. Otherwise, researchers are limited to explaining the voting behavior of judges across discrimination cases more generally. Finally, and most pertinent to this study, it is possible to account for decisions involving multiple claimants from diverse racial and ethnic backgrounds. Not only does this collection strategy improve one's ability to examine how judges rule towards specific claimants, but it also provides an added dimension to the study of descriptive representation by focusing on the direct consequences that judges' decisions can have on racial and ethnic minorities who come before the courts to appeal their case.

[34] It is important to note that this collection strategy is much different from previous collection efforts. Though studies focusing on judicial behavior slightly differ, one strategy aggregates all grievances so that three individual votes are recorded per case. Another strategy is to record cases where there was a clear victor. This involves cases that were either unanimously decided across all issues (e.g. Martinek and Collins, 2011) or split-decision cases where the majority of decisions were decided in favor of one party over another (e.g. Farhang and Wawro, 2004). Take for instance, a claimant who appeals their case involving three specific grievances: discrimination, retaliation, and hostile work environment. If a panel rules in favor of the claimant in at least two of the three issues, one would be able to identify a clear victor. The dependent variable would then be coded as a single "liberal vote" or "favorable vote" for each judge on the panel. If, however, a case involved four issues in which the claimant and employer each won half of the decisions, the case would be excluded from the entire analysis.

Dependent Variables

The dependent variable for both units of analyses is *Rules in Favor of Claimant.* Following Songer et al. (1994), this variable is coded as "1" if a judge or a panel votes in favor of the claimant. The variable is coded as "0" if otherwise. At both the individual and panel levels, approximately 74 percent of the decisions are against the claimant and 26 percent of the decisions are coded as for the claimant. While the distribution of the dependent variable illustrates the difficulty in winning a race discrimination case (Selmi, 2000-2001), it also suggests that a vote in favor racial and ethnic minorities is substantively more meaningful. Given the dichotomous nature of the dependent variable, I utilize Logistic regression analysis to test all hypotheses

Independent Variables

The main independent variables measure the racial and ethnic composition of the panel. Here I test the argument that the presence of descriptive representatives will lead to favorable panel outcomes: *One Latino Judge on Panel, One Black Judge on Panel.* I coded all panels consisting of one Latino and two white judges as "1" and "0" if otherwise. Likewise, panels were coded as "1" if they consisted of one African American judge and two white judges. All other panels were coded as "0." [35] I also interacted the two main independent variables to test the hypothesis that the presence of a co-racial and

[35] It is important to note that this coding strategy departs from previous research, which has a tendency to treat racial and ethnic minority judges as monolithic groups (e. g. Farhang and Wawro, 2004; Boyd, Epstein, and Martin, 2010). For example, Farhang and Wawro (2004) create a dichotomous, "minority judge" variable to measure the presence of African American, Latino, and Asian American judges. As a result, researchers are unable to examine the extent to which race *and* ethnicity play a role in judicial behavior.

a co-ethnic claimant will play a conditional role in the ability to influence more favorable decisions towards the claimant. Both variables are dichotomous in nature. *One Latino Judge on a Panel*Latino Claimant* is coded as "1" to indicate an ethnically diverse panel (one Latino judge on panel) ruling over a Latino claimant. A coding of "0" indicates otherwise. Similarly, *One Black Judge on a Panel*Black Claimant* is coded as "1" to indicate a racially diverse panel (one Black judge on a panel) ruling over a Black claimant. A coding of "0," therefore, indicates otherwise.

The frequencies for all independent variables are included in Table 3.1 below. More specifically, it shows the distribution of panel decisions by the race and ethnicity of the claimant across different panel compositions. Between 2001 and 2009, panels consisting of one Latino judge and panels consisting of one African American judge accounted for 12.4 percent (158) and 24.41 percent (311) of all decisions, respectively. Since Black claimants are overwhelmingly represented in Title VII discrimination claims, the frequency of panel decisions involving a Black claimant was much higher for all panel compositions. While panels consisting of all-white judges made a decision involving Black claimant about 41 percent (522) of the time, panels involving one Black judge and one Latino judge accounted for 16 percent (207) and 7 percent (87) of all decision, respectively. The frequency of panel decisions involving a Latino claimant was much lower in comparison. In all, 8 percent (106) of the decisions involved an all-white panel, followed by ethnically diverse panels, which accounted for 2.65 percent (33) of all decisions. Racially diverse panels, on the other hand, accounted for 1.73 percent (22) of all decisions.

Table 3.1: Distribution of Votes by the Race and Ethnicity of the Judge and the Claimant in Discrimination Claims (2001-2009)

	Black Claimant	Latino Claimant (non-Black)	Asian Claimant	Middle Eastern Claimant (non- Black)	White Claimant (non-Latino)	Total
One African American Judge on a Panel	66.56% 16.25% (207)	7.07% 1.73% (22)	6.75% 1.65% (21)	0.96% 0.24% (3)	18.65% 4.55% (58)	100% 24.41% (311)
One Latino on a Panel	55.06% 6.83% (87)	20.89% 2.65% (33)	3.16% 0.39% (5)	8.86% 1.10% (14)	12.03% 1.49% (19)	100% 12.40% (158)
All White Panel	66.84% 40.97% (522)	13.17% 8.32% (106)	4.72% 2.98% (38)	2.73% 1.73% (22)	14.53% 9.18% (117)	100% 63.19% (805)

Note: For each cell, the top row depicts row percentages and the second row depicts total percentages. The number of observations is in parentheses. Since total percentages are rounded, they do not total 100%

Control Variables

In addition to the main independent variables, I also control for a host of background characteristics. Table 3.2 provides the descriptive statistics for all control variables. All information regarding judges' background characteristics is found at the *Judicial Biographical Database* (Federal Judicial Center, n. d.). First, I control for the gender composition of the panel. Specifically, these variables include: One *Female Judge on Panel* and *Two Female Judges on a Panel*. All variables are dichotomous variables, which are coded as "1" for the presence of a one or two minority judges on a panel and "0" if otherwise. Following research that finds age to have a significant influence on discrimination (Manning et al., 2004), I control for the *Average of the Panel* at the time of the decision.

Table 3.2: Descriptive Statistics

	Mean	SD	Min	Max
One Latino Judge on a Panel	0.262	0.439	0	1
One Black Judge on a Panel	0.124	0.329	0	1
Two Black Judges on a Panel	0.244	0.429	0	1
One Female Judge on a Panel	0.299	0.458	0	1
Two Female Judges on a Panel	0.139	0.346	0	1
Average Age of Panel	63.951	5.091	47	82
Panel Ideological Median	0.150	0.312	-0.538	0.577
Circuit Ideological Median	0.247	0.202	-0.309	0.549
Supreme Court Ideological Median	0.387	0.238	0.007	1.18
Favorable Lower Court Decision	0.063	0.244	0	1
Discrimination Case	0.603	0.489	0	1
Hostile Work Environment Case	0.124	0.329	0	1
Amicus Curiae Brief	0.055	0.229	0	1
Black Claimant	0.640	0.480	0	1
Latino Claimant	0.126	0.332	0	1
Asian Claimant	0.050	0.218	0	1
Middle Eastern Claimant	0.030	0.172	0	1
1st Circuit	0.038	0.192	0	1
2nd Circuit	0.045	0.208	0	1
3rd Circuit	0.016	0.127	0	1
4th Circuit	0.049	0.216	0	1
5th Circuit	0.079	0.270	0	1
6th Circuit	0.069	0.253	0	1
7th Circuit	0.281	0.449	0	1
8th Circuit	0.175	0.380	0	1
10th Circuit	0.041	0.199	0	1
11th Circuit	0.074	0.262	0	1
D.C. Circuit	0.053	0.224	0	1

In addition to the social composition of the panel, the third cluster of variables accounts for attitudes and the strategic bargaining and intra-branch relations. First, I control for the *Ideology of the Panel Median*, as the median voter theorem predicts that judges representing the ideological median may have the greatest influence on panel outcomes (see Collins and Moyer, 2008). Similarly, I control for the *Ideology of the Circuit Median*, as decisions may be overturned by a court *en banc* if rulings do not conform to the ideological preferences of the circuit (Van Winkle, 1997). Both the *Panel Median* and *Circuit Median* are measured as the median GHP ideological score at the time of the decision. To identify the ideological position of the median judge and the circuit median, I utilize Giles, Hettinger, and Peppers (GHP) (2001) coding scheme, which ranges from -1 (most liberal) to 1 (most conservative).[36] A negative coefficient, therefore, indicates that judges or panels with more liberal ideologies are more likely to rule in favor of the claimant. Finally, judges may be responsive to the Supreme Court since it has control over its own docket and the power to overturn lower court decisions (Cross and Tiller, 1998; Songer, Segal, and Cameron, 1994). To measure *Median*

[36] It is important to note that partisanship and GHP scores are highly correlated (.90). However, I opted to use GHP scores because they capture key actors involved in the appointment process. Specifically, the coding scheme is based upon *Poole-Rosenthal Common Space* scores that measure the ideology of the president and home-state senators. In the absence of senatorial courtesy, a judge's ideology score is the same as the president's. If one home-state senator shares the same party affiliation as the president, then a judge's ideological score reflects the ideological score of the home-state senator. Finally, if two home-state senators share the same party affiliation as the president, then a judge's ideological score is the mean value of the senator's scores (see Giles et al., 2001).

Supreme Court Justice, I use Martin and Quinn (2002) ideological scores for each calendar term. These scores are unbounded, with negative values representing more liberal Courts and positive values representing more conservative Courts. Finally, to control for routine cases, I control for *Lower Court Decision.* This variable is coded as "1" if the circuit court upheld the lower court's decision and "0" if otherwise.

The dataset also provides the unique opportunity to control for the facts of the case. Following research that finds discrimination to be influenced by skin color and "foreignness" (Espino and Franz, 2002; Goldsmith et al. 2006; Kim, 1999), I expect judges to be less likely to rule in favor of African Americans than Latinos and other minorities. Specifically, *Black Claimant, Latino Claimant, Asian Claimant, Asian American Claimant, Middle Eastern Claimant, and Native American Claimant* are each coded as "1" and "0" if otherwise. White claimants serve as the baseline for comparison. Second, I control for *Amicus Curiae* briefs, as studies demonstrate that special interest groups can influence judicial behavior (Collins and Martinek, 2011). Briefs intended to influence a favorable outcome for racial or ethnic minorities are coded as "1" and "0" if otherwise. Following previous studies, which find significant differences between claim types (Parker, 2009), I account for *Discrimination* and *Hostile* work environment claims, holding retaliation claims as a baseline for comparison. Both claim types are coded as "1" and "0" if otherwise.[37]

Finally, to take into account the political context and circuit norms (see Farhang and Wawro, 2004), I include dummy variables for each year and circuit, including the

[37]Parker (2009), for example, demonstrates that judges are less likely to rule for the plaintiff in retaliation cases, though the differences were small.

D.C. circuit. In the models I present below, the 9th circuit serves as the baseline for comparison, as studies demonstrate the 9th Circuit Court of Appeals to be more liberal than other circuits (Scherer, 2004-2005). Yearly controls are also added, with 2001 serving as the baseline for comparison

Results

Table 3.3 tests the influence that Latino and African American judges have on three-judge panels at the bivariate level. The preliminary results do not show support for Hypothesis 1, which states that the presence of a Latino or an African American judge will increase the probability that a panel will rule in favor of the claimant in Title VII claims. In terms of racially diverse panels, the results demonstrate that the presence of one African American judge on a panel does not have any significant influence on panel outcomes. Latino judges, on the other hand, tend to have much greater influence over their panel colleagues. Contrary to theoretical expectations, though, the presence of a Latino judge on a panel has an unexpected effect on the panel decision, as ethnically diverse panels are less likely to rule in favor of the claimant across Title VII discrimination claims.

I next sub-divided the data in Table 3.3 by the race and ethnicity of the claimant to examine the extent to which "panel effects" are conditioned by "claimant effects." The results provide preliminary support for Hypothesis 2, which states that the presence of a co-racial or co-ethnic claimant will increase the probability that a racially or ethnically diverse panel will rule in favor of the claimant in Title VII discrimination claims. Demonstrating partial support for Hypothesis 2, the table shows that panels consisting of one African American judge rendered a favorable decision towards the claimant 30

percent of the time, which is about 8 percentage points greater than panels consisting of all white judges. The presence of a Latino judge, however, has a much different effect. Contrary to Hypothesis 2, the presence of a Latino judge decreases the likelihood that a white judge will render a favorable decision. In fact, the percentage of favorable votes is only 9% when the claimant is a Latino, which is about 41 percent less than panels consisting of all-white panels. In all, these findings suggest that while African American and Latino judges have greater influence over their panel colleagues when a co-racial or co-ethnic claimant is present, Latino judges' ability to influence outcomes is not in the theorized direction.

Table 3.3: Favorable Panel Outcomes by the Racial and Ethnic Composition of the Panel and the Race and Ethnicity of the Claimant

	Full Model		**Black Claimant**		**Latino Claimant**	
	Proportion	SE	Proportion	SE	Proportion	SE
All White Panel	0.270	0.015	0.218	0.018	0.500	0.048
One African American Judge on a Panel	0.289	0.025	0.300*	0.032	---	---
One Latino Judge on a Panel	0.164**	0.029	---	---	0.090***	0.050

† p <.10, two-tailed *p < .05, two-tailed. **p < .01, two-tailed. ***p < .001, two-tailed.
Note: Table depicts a difference of means test (t-test). It compares the proportion of all white judges ruling in favor of the claimant with panels consisting of either one Latino or African American judge. The dependent variable is a vote in favor of the claimant.

Using Logistic Regression to analyze my models, the next step in the analysis is to test whether the bivariate results continue to hold once alternative explanations of

voting and panel behavior are taken into account. Table 3.4 presents both models 1 and 2, which examine both panel and claimant effects on panel voting behavior. Model 1 is the constrained model, which tests the argument that the presence of one minority judge on a panel can influence panel outcomes. Model 2 is the full model, which includes the two interaction effects that consider the mediating role that claimant cues might have on the ability to influence

Table 3.4: Logistic Model of Panel Outcomes in the U.S. Court of Appeals (2001-2009)

	Model 1 (Constrained Model)			Model 2 (Full Model)		
Variables	**Coef.**	***SE* Robust**	**Discrete Change (min → max)**	**Coef.**	***SE* Robust**	**Discrete Change (min →max)**
Social Composition of Panel						
One Latino Judge on a Panel	-1.671***	0.311	-0.1920	-1.199***	0.323	-0.1513
One Latino Judge on a Panel*Latino Claimant	---	---	---	-2.139**	0.797	-0.1883
One Black Judge on a Panel	0.492*	0.199	0.0886	-0.240	0.336	-0.0385
One Black Judge on a Panel*Black Claimant	---	---	---	1.047**	0.376	0.2072
One Female Judge on a Panel	0.302	0.204	0.0526	0.343†	0.206	0.0595
Two Female Judges on a Panel	0.858***	0.263	0.1684	0.940***	0.265	0.1852
Average Age of Panel	0.000	0.015	-0.0029	-0.001	0.015	-0.0049
Attitudes & Strategic Interaction						
Panel Ideological Median	0.392	0.313	0.0715	0.393	0.319	0.0709
Circuit Ideological Median	0.179	0.987	0.0255	0.248	1.024	0.0348
Supreme Court Ideological Median	0.795	1.197	0.1710	0.979	1.222	0.212
Favorable Lower Court Decision	2.313***	0.317	0.5134	2.357***	0.317	0.5215
Case Facts						
Discrimination Case	-0.002	0.179	-0.0003	-0.055	0.181	-0.0092
Hostile Work Environment Case	0.350	0.246	0.0633	0.304	0.247	0.0539
Amicus Curiae Brief	0.067	0.317	0.0115	0.236	0.323	0.0416
Black Claimant	0.006	0.217	0.001	-0.287	0.250	-0.0488

Table 3.4 (cont.) Logistic Model of Panel Outcomes in the U.S. Court of Appeals (2001-2009)

Latino Claimant	0.650*	0.304	0.1241	0.886**	0.312	0.1742
Asian Claimant	-0.157	0.443	-0.0253	-0.138	0.438	-0.0222
Middle Eastern Claimant	0.570	0.537	0.1103	0.355	0.513	0.0647
Circuit Norms						
1st Circuit	-2.496**	0.900	-0.2216	-2.228*	0.921	-0.2078
2nd Circuit	-2.468	0.923	-0.2060	-2.364	0.948	-0.1999
3rd Circuit	-0.286*	0.504	-0.0446	0.020*	0.499	0.0034
4th Circuit	-1.575**	0.664	-0.1640	-1.505**	0.652	-0.1579
5th Circuit	-2.017	0.730	-0.1931	-1.891	0.736	-0.1847
6th Circuit	-1.003	0.865	-0.1303	-0.984	0.865	-0.1268
7th Circuit	-1.021***	0.655	-0.1311	-0.771***	0.648	-0.1047
8th Circuit	-2.800*	0.728	-0.3396	-2.623*	0.727	-0.3197
10th Circuit	-1.733	0.690	-0.2085	-1.583	0.694	-0.1934
11th Circuit	-0.141**	0.668	-0.023	0.072**	0.667	0.0122
D.C. Circuit	-2.438**	0.804	-0.2107	-2.296*	0.811	-0.2027
Yearly Controls						
2002	0.266	0.545	0.0481	0.201	0.567	0.0353
2003	-0.498	0.377	-0.0761	-0.487	0.387	-0.0736
2004	-0.155	0.428	-0.0253	-0.256	0.445	-0.0408
2005	-0.063	0.503	-0.0105	-0.027	0.521	-0.0044
2006	-0.616†	0.366	-0.0898	-0.662†	0.363	-0.0942
2007	-1.415***	0.420	-0.1676	-1.486**	0.424	-0.1707

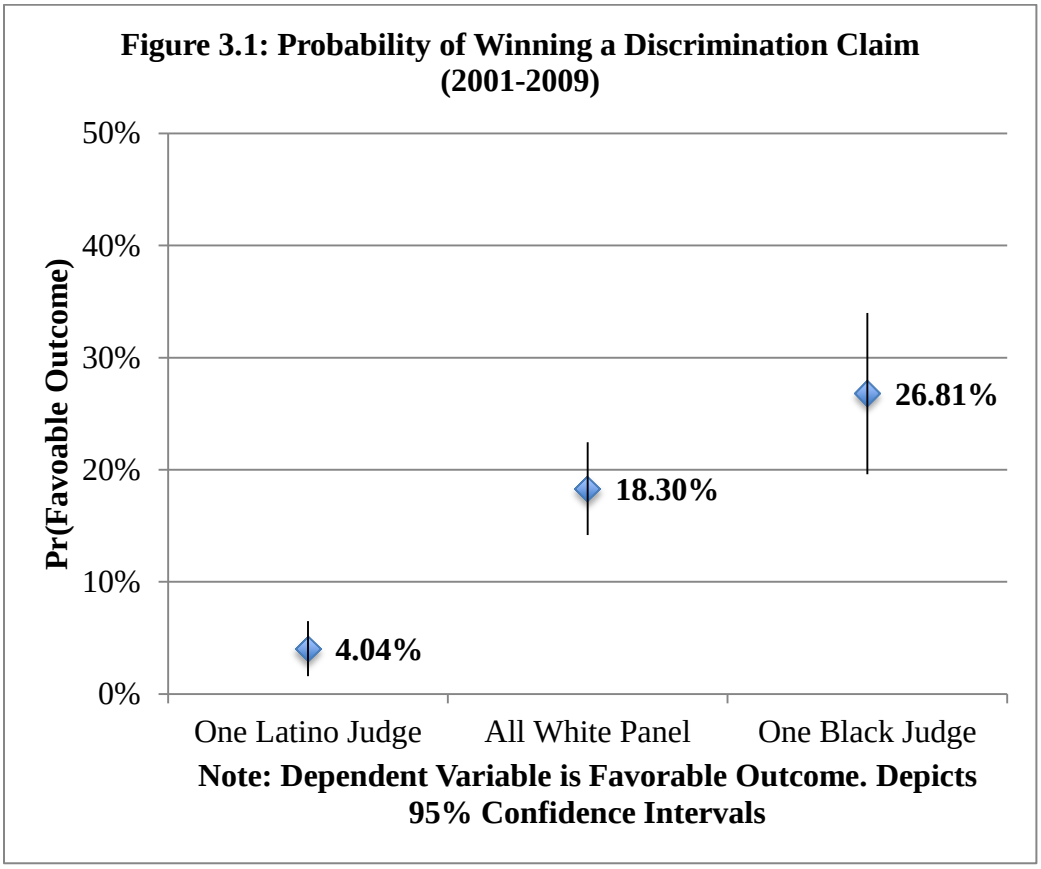
Table 3.4 (cont.): Logistic Model of Panel Outcomes in the U.S. Court of Appeals (2001-2009)

2008	-1.011*	0.489	-0.1322	-1.005*	0.478	-0.1299
2009	-0.670	0.745	-0.0948	-0.847	0.752	-0.1127
Constant	0.174	1.319		0.132	1.328	
N		1,274			1,274	
Log Pseudo Likelihood		-589.5812			-581.18178	
Correctly Predicted		79.75%			79.67%	

†p <.10, two tailed; *p < .05, two-tailed; **p < .01, two-tailed; ***p < .001, two-tailed.
Note: The dependent variable is panel ruling in favor of the claimant. Observations clustered around panel (1,274 clusters).

Overall, model 1 demonstrates partial support for Hypothesis 1, which states that the presence of at least one minority judge will lead to more favorable outcomes. After controlling for alternative explanations of voting behavior, the results from the analysis show that the presence of a Latino judge leads to less –not more as expected- favorable outcomes. *One Latino Judge on a Panel* is significant and negative ($p < .001$), suggesting that the presence of a Latino judge decreases the probability that an appellant will win a claim. However, *One Black Judge on a Panel* is both significant and positive (.05), suggesting that the presence of an African American Judge increases the likelihood of a favorable outcome. Figure 3.1 compares the predicted probability of a claimant winning a discrimination claim when the panel consists of all white judges and when the panel is racially and ethnically diverse. Holding all variables at their appropriate means and modes, the figure illustrates that the racial and ethnic composition of the panel can play an important role in determining panel outcomes. While claimants have the greatest chance of winning their claim when the panel is racially diverse, the presence of Latino judge has the opposite effect on panel outcomes. For example, the presence of an African American judge on a panel increases the predicted probability of a claimant winning their claim by 26.81 percent, nearly 9 percentage points greater than all-white panels. By contrast, the probability of a claimant winning a discrimination claim is at its lowest when at least one Latino judge is present on a panel. In all, the direction of panel outcomes supports previous research that concentrates on the individual voting behavior of African American and Latino judges. For example, African American judges are more likely than white judges to vote in favor of the claimant in race discrimination cases and criminal cases (Gottschall, 1983-1984; Scherer; 2004-2005; Collins and Moyer 2008).

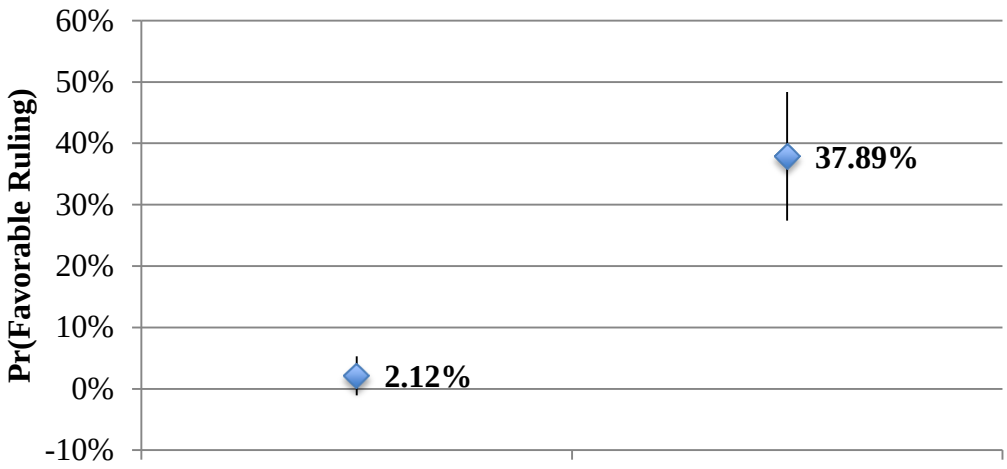
Among Latino judges, however, the story is much different. Although Manning (2004) finds that Latino judges are no more likely than their white colleagues to rule against the claimant across discrimination claims, Chapter 2 of this dissertation finds that Latino judges have a tendency to rule against the claimant when Title VII employment discrimination claims are solely based on race and ethnicity. Thus, the presence of a Latino judge may not provide the same cues as their African American colleagues that lead to more favorable outcomes.



Model 2 (Table 3.4) next tests Hypotheses 2, which states that racially diverse and ethnically diverse panels will be more likely to rule in favor of the claimant when a co-

racial or co-ethnic claimant is present. Overall, the findings suggest that panels consisting of one Latino judge tend to behave differently than panels consisting of all-white judges. Different from my expectations, *One Latino Judge Panel *Latino Claimant* is significant and negative ($p < .01$), suggesting that Latino claimants are less likely to win their claims when a Latino judge is present on a panel. The overall effect of having a Latino judge on a panel, moreover, is quite substantial once the ethnicity of the claimant is taken into account. After holding all other control variables at their appropriate means and modes, Figure 3.2 shows that the probability of ruling in favor of a Latino claimant is about 2.12 percent for panels with one Latino judge and 37.89 percent for panels consisting of all-white judges. It is also important to note that the main independent variable, *One Latino Judge on a Panel*, also remains significant in the model ($p < .001$). However, the sign of the coefficient is also negative, which suggests that panels with one Latino judge are less likely than panels that are not ethnically diverse to rule in favor of non-Latino claimants. Thus, panels consisting of one Latino judge have a tendency to rule against the claimant more generally.

Figure 3.2: Proabability of a Latino Claimant Winning a Discrimination Claim (2001-2009)



Note: Dependent Variable is Favorable Outcome. Depicts 95% Confidence Intervals

These findings should be interpreted with some caution, however. Similar to the previous chapter, further investigation demonstrates that the results are not necessarily generalizable across all Latino judges in the U.S. Courts of Appeals. Table 3.5, for example, provides a list of Latino judges and their voting behavior towards Latino claimants. Of the 13 Latino appellate-court judges in the dataset, the table demonstrates that only 5 Latino judges have ever made a decision involving a Latino claimant. More specifically, these judges include 2 judges appointed by a Democratic president (J. Fortunato Benevides; J. Carlos F. Lucero) and 3 judges appointed by a Republican president (J. Emilo M. Garza; J. Edward C. Prado; J. Juan R. Torruella). In line with the results in the fully specified model (Table 3.4, model 2), the majority of Latino judges, both Democrat and Republican in partisanship, tend to rule against Latino judges. In

addition to generalizability issues, Table 3.5 shows that Judge Carlos F. Lucero, a Democrat from the 10th Circuit Court of Appeals in Colorado, is an important outlier driving the results in the fully specified model (Table 3.4, model 2). In comparison to the other four judges, Judge Carlos F. Lucero was involved in 20 of the 33 panel rulings, or 60.60 percent of the total observations, involving another Latino claimant. Of these 20 panel decisions, the panel ruled against 11 different individual Latino claimants 100 percent of the time.

Table 3.5: The Voting Behavior of Latino Judges Towards Latino Claimants by Partisanship

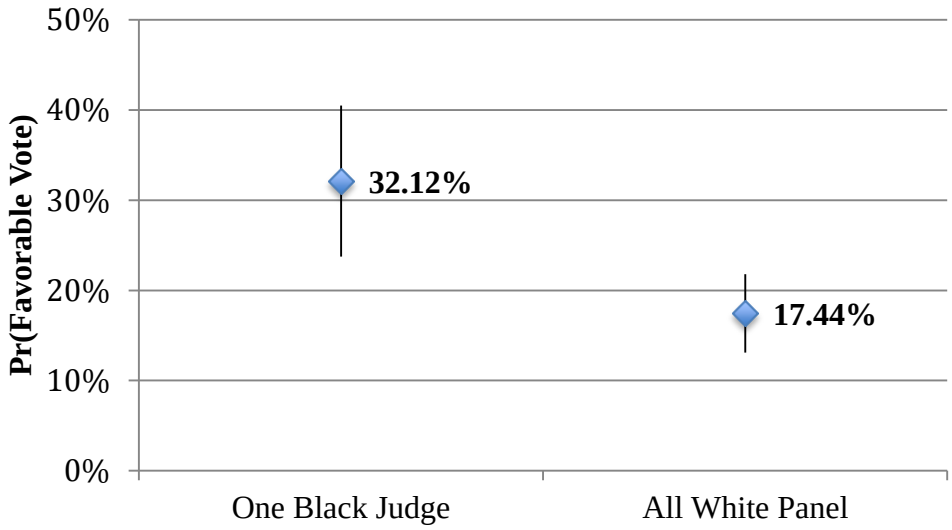
	Unfavorable Outcome	Favorable Outcome	Total
Appointed by Democratic President			
Fortunato P. Benavides	67.67% (2)	33.33% (1)	100% (3)
Carlos F. Lucero	100% (20)	0% (0)	100% (20)
Appointed by Republican President			
Emilio M. Garza	50% (1)	50% (1)	100%(2)
Edward C. Prado	100% (1)	0% (0)	100% (1)
Juan R. Torruella	85.71% (6)	14.29% (1)	100% (7)
Total	90.90% (30)	9.10% (3)	100% (33)

Note: Percentages in parentheses reflect row percentages.

In comparison to panels involving one Latino judge, the presence of a co-racial claimant has a much different effect on racially diverse panels. Following Hypotheses 2, model 2 demonstrates that *One African American Judge on a Panel*Black Claimant* is significant and positive ($p < .01$). Thus, Black claimants are more likely to win their

individual claims when an African American judge is present on a panel. Holding all control variables at their appropriate means and modes, Figure 3.3 illustrates that the probability of a Black claimant winning their individual claim is 32.12 percent –nearly 15 percentage points higher than Black claimants facing all-white panels. Overall, the findings support the argument that Black claimants serve as important cues that foster perceptions of commonality with other African American judges.

Figure 3.3: Probability of a Black Claimant Winning a Discrimination Claim (2001-2009)



Note: Dependent Variable is Favorable Outcome. Depicts 95% Confidence Intervals

In addition to race and ethnicity, the models control for a host of variables found to influence the voting behavior of judges. For example, *Two Female Judges on a Panel* is significant and positive across the claimant-based models ($p < .001$) but *One Female Judge on a Panel* is not. Taken together, the two findings suggest that female judges can only influence panel outcomes when they are in the majority. Following the work of

Boyd et al. (2010), the findings may also highlight the importance of salient cases in judicial behavior, as female jurists are most influential when issues are most salient to female jurists and not issues dealing specifically with racial and ethnic minorities (see also Songer et al., 1994).

Interestingly, many of the attitudinal and strategic interaction variables are insignificant in the models. More specifically, the results show that the panel ideological median, circuit ideological median, and Supreme Court ideological median do not have any apparent influence on the panel outcomes.[38] Accounting for more routine cases, though, *Lower Court Decision* is significant and positive ($p < .001$). In other words, Courts of Appeals judges are more likely to render a favorable panel decision when the lower court's decision is also in favor of the claimant. The overall effect on panel outcomes is quite substantive, representing a 52 percent change in the predicted probability. This outcome is not surprising, though, given that the appellate courts rarely overturn the decisions in the lower courts.

In addition to the attitudes and strategic interaction, the race and ethnicity of the claimant can have significant influence over panel outcomes. For example, *Latino Claimant* is significant and positive ($p < .05$), suggesting that Latino claimants are more likely than non-Latinos to win their discrimination claim. Despite evidence that Latino

[38] Table B.1 in Appendix B also tests for panel effects by examining the partisan composition of the panel. Kastellec (2011; 2007), for example explains that the presence of a counter-judge or a judge in the minority position, such as a Democratic judge sitting on a majority-Republican panel, can influence panel outcomes. The results from the model confirm this argument by showing that the presence of one Democrat judge on a panel increases the probability of a favorable panel ruling. Perhaps more importantly, the main independent variables continued to hold, even after controlling for these partisan effects.

claimants tend to lose in the state courts (Steffensmeier and Britt, 2001; Holmes et al., 1992), the results suggest that Latino claimants are not necessarily marginalized in the appellate-court system.

The last cluster of variables shows that institutional norms are important for understanding panel behavior (Farhang and Wawro, 2004). Holding the 9th circuit as the baseline for comparison, the results from the full model demonstrate that several circuits, including the 1st, 2nd, 3rd, 4th, 7th, 8th, 11th circuits are less likely to rule in favor of claimants. Taken together, these findings suggest that the 9th Circuit Courts of Appeals, which generally represents the west coast and parts of the Northwest, tend to be more liberal than the other regional circuits (Scherer 2004-2005). Once again, these findings make intuitive sense given that the circuits listed above cover many parts the South and the Midwest where issues of race have dominated the political landscape.

Conclusion

Over the years, the Courts of Appeals have become more diverse. Not only is diversity important for establishing a sense of symbolic representation, but it can also lead to more substantive policy outcomes. This chapter examined the latter of the two merits of descriptive representation by moving beyond individual voting behavior and analyzing the extent to African American and Latino judges can improve the likelihood of claimants wining their disputes across Title VII discrimination claims. Following small group theory and panel effects, this chapter argued that African American and Latino could significantly influence their panel colleagues to rule in favor of the claimant. While the presence of salient cases, such as Title VII claims, provides one condition for more

influential behavior, this chapter also argued that their ability to influence their panel colleagues would be also be enhanced by the presence of co-racial or co-ethnic claimants.

The results from this analysis demonstrated only partial support for my hypotheses, however. While the presence of an African American judge significantly increases the probability that claimants in Title VII cases will win their disputes, the results also demonstrated that this more favorable behavior is largely conditioned by the presence of a co-racial claimant. Contrary to expectations, though, panels with one Latino judge decrease the probability of a favorable outcome, regardless of whether or not co-ethnic claimants are present. Therefore, ethnically diverse panels, consisting of one Latino judge, are less likely than racially diverse and all-white panels to rule in favor of the Latinos and non-Latinos alike.

These findings have important implications for the relationship between descriptive and substantive representation. Previous research focusing on the descriptive representation suggests that institutional rules prevent racial and ethnic minorities from being responsive to a wider array of racial and ethnic minority communities (Lublin, 1997). According to this view, racial and ethnic minority judges will have a difficult time overcoming the institution of majority rule "since their policy preferences are reinforced by racial cleavages, and not by broader liberal or conservative ideologies" (Preuhs, 2006, 587). Indeed, Chapter 2 of this dissertation supports this assertion to some extent. Since African American and Latino judges vote differently from their white colleagues (and from each other) and because the probability of sitting on a majority-minority panel is quite low, the appellate-courts offer few opportunities for racial and ethnic minority judges to form majority coalitions. At the same time, the previous chapter also

demonstrates that white judges, who sit on racially and ethnically diverse panels, tend to conform to the voting behavior of African American and Latino judges. In this instance, white judges vote differently than how they would otherwise vote if they were sitting on all-white panels.

This chapter builds on these last findings by showing that racial and ethnic minorities are not marginalized in the courtroom. Although African American and Latino jurists represent "polarizing interests," the presence of a single African American or Latino judge on a panel can significantly influence the voting behavior of their white colleagues and determine the outcome of panel decisions. Through their ability to form majority coalitions, the results from this analysis suggest that African American and Latino judges actually have more opportunities, not less, to shape and craft policy. Given their ability to influence their panel colleagues, there is good reason to believe that African American and Latino jurists will be more likely to write the majority opinion and set the policy agenda (Maltzman and Whalbeck, 2004). Subsequently, minority judges can challenge existing legal precedent that prevents racial and ethnic minorities from winning their claims in the future.

Finally, this chapter has implications for the federal courts as a policy-making institution. Over the years, African American and Latinos have relied on a "legal strategy" to pursue their policy agenda to compensate for a lack of representation in Congress and state legislative institutions. So long as the federal courts become more diverse in their racial and ethnic composition, the findings from this chapter suggest that the courts will continue to be a viable option for racial and ethnic minorities who wish to either appeal their Title VII claims or pursue an even more broad policy agenda related to

employment discrimination. In the U.S. Courts of Appeals, especially, the institution of majority rule plays an important role in determining panel decisions. Although judges prefer unanimity to divided panels (Atkins, 1974), minority judges need only to persuade one of their panel colleagues to reach a final decision. Moreover, the small-group context of the collegial courts can allow racial and ethnic minority judges to have greater bargaining leverage than minority representative across other political institutions, such as Congress. This chapter reinforces this view, as African American and Latino judges, who represent polarizing interests, are able to influence their panel colleagues and determine panel outcomes.

CHAPTER 4

MAJORITY OPINION WRITING AND THE SELECTION OF AFRICAN AMERICAN and LATINO JUDGES

In the U.S. Courts of Appeals, judges must be able to influence their panel colleagues and establish a majority coalition an in order to achieve their policy goals. The previous chapter in this dissertation, therefore, moved beyond research that focuses on the individual voting behavior of judges by examining the extent to which African American and Latino judges can influence panel outcomes. Contrary to research that contends African American and Latino judges are marginalized in the courtroom (see Hawkesworth, 2003), Chapter 3 of this dissertation demonstrated that racial and ethnic minority judges can influence the voting behavior of their white-panels colleagues. In addition to the presence of salient policy issues, however, this dissertation also demonstrated that the ability to influence is also conditioned by the presence of a co-racial or co-ethnic claimant. While racially diverse panels are more likely to rule in favor of Black claimants, ethnically diverse panels are less likely to rule in favor of Latino and non-Latino claimants alike. In all, the results suggest that African American and Latino judges are not marginalized in the federal collegial courts, as they will have more opportunities to determine panel outcomes and even write the majority opinion.

In the U.S. Courts of Appeals, the assignment of the majority opinion is one of the most important responsibilities of the presiding judge. Not only is it at the core of the policy making process (Segal and Spaeth, 2002), but it also represents the ability to shape the policy agenda and promote the organization of the court (Maltzman and Wahlbeck, 2004). In comparison to the U.S. Supreme Court (Maltzman and Wahlbeck,

2004, 1996; Maltzman, Spriggs, and Wahlbeck, 2000; Segal and Spaeth, 2002; Brenner and Spaeth, 1986, 1988; Rhode, 1972; Slotnick, 1978, 1979), however, much less scholarship has been dedicated to understanding those factors that shape the decision to assign the majority opinion in the U.S. Courts of Appeals (but see Owens and Black, 2009; Atkins, 1974; Cheng 2007). While some have examined the policy specialization of judges (Atkins, 1974; Cheng, 2007), others have focused more indirectly on the subject by examining the content of the majority opinion (but see Owens and Black, 2009) and decisions to write separate concurring and dissent opinions (but see Hettinger et al., 2003, 2004ab).

Scholarship focusing on majority opinion writing in the federal courts, however, has yet to examine whether the background characteristics of judges can play an important role in understanding the decision to assign the majority opinion (but see Owens and Black, 2009). In this chapter, I add to the extant research by examining those factors that shape the presiding judges' decision to assign the majority opinion. In particular, I focus on the role of background characteristics in the decision-making process by examining the extent to which racial and ethnic minority judges are selected to write the majority opinion. In comparison to the U.S. Supreme Court, the U.S. Courts of Appeals provides a unique opportunity to examine these two research questions. Not only does the regional variation of the appeals-court circuits allow for greater levels of racial and ethnic diversity, but random panel assignments also give researchers the opportunity to examine how racial and ethnic minority judges behave once they are in the more formal role of the presiding position and able to assign the majority opinion. Following research that focuses on small group theory and panel effects, this chapter contends that,

minority judges hold a distinct advantage over their panel colleagues, as the presiding judge may wish to promote non-policy goals, such as unanimity, specialization, and credibility across cases considered salient to racial and ethnic minorities.

Focusing on Title VII employment discrimination cases based on race and ethnicity between 2001 and 2009, this chapter finds support for my argument. Specifically, the presiding judge is more likely to assign the majority opinion to African American judges, but not to Latino judges, though important differences emerge once non-presiding, Latino judges are compared to other non-presiding, non-Latino judges. The likelihood of writing the majority opinion, moreover is not conditioned by the formal role of the presiding judges, as African American and Latino judges are no more likely than their white colleagues to assign the majority to themselves when given the opportunity. In all the findings have important implications for the relationship between descriptive representation and substantive policy outcomes in the U.S. Courts of Appeals, as African American and Latino jurists can promote policies that make it easer for racial and ethnic minorities to win employment discrimination claims.

Background

In the U.S. Courts of Appeals, opinion assignment responsibilities are delegated to the presiding judge in the panel-majority. In the U.S. Courts of Appeals, the presiding judge is the chief judge who acts as the head administrator for each of their individual circuits (Hettinger, Lindquist, and Martinek, 2003). Internal rules and operating procedures stipulate that in order to qualify as a chief judge, a candidate must be in regular active service who is senior in commission of those judges who are 1) 64 years of age or under 2) have served for one year or more as a judge and 3) have not previously

served as a chief judge (Court of Appeals, n. d.). In the absence of the chief judge, the presiding judge is the most senior or tenured judge in active service.[39]

The power to assign the majority opinion is important for several reasons. Most notably, the majority opinion reflects the core of the policy making process (Segal and Spaeth, 1993, 2002). Judges use the majority opinion to clarify the interpretation of law, not only to help fulfill their error correction responsibilities, but also to set legal precedent, which serves as important guidelines for lower federal courts and administrative agencies. The majority opinion also gives judges in the presiding position the opportunity to set the policy agenda (Maltzman and Wahlbeck, 2004: 551). This agenda-setting power is reinforced by internal rules and procedures that give the majority-opinion writer the power to circulate the initial draft to her panel colleagues for approval. Consequently, judges can determine the scope of issues that are initially addressed at the onset of conference. Finally, the majority opinion promotes the administration of the circuit (Malzman and Wahlbeck, 2004). The presiding judge can create equity and foster a sense of collegiality through the careful distribution of workloads (Rehnquist, 1987; Spaeth, 1984; Slotnick, 1979), improve legitimacy of a decision by identifying judges who specialize in distinct areas of law (Atkins, 1974), and promote the overall efficiency of the circuit by assigning judges who have records of disposing cases at a faster rate (Matlzman and Wahlbeck, 1996; Brenner and Palmer

[39] The presiding judges, therefore, exclude judges who are in senior status. At the age of 65, judges are given the option to retire or assume senior status, which requires a minimum of 15 years in active service (Courts of Appeals Faqs, n.d).

1988). For these reasons, the presiding judge holds a distinct advantage over her panel colleagues.

The importance of the presiding judge has led several scholars to examine those factors that shape the judges' decision to assign the majority opinion in the Supreme Court. This research assumes that judges are single-minded seekers of policy (Segal and Spaeth, 1993; Epstein and Knight, 1998). However, the ability to pursue policy goals is constrained by the "preferences of other actors, the choices they expect others to make, and the institutional context in which they act" (Epstein and Knight 1998, 10; Epstein and Jacobi, 2010). Thus, judges are understood to be "policy maximizers," as they rank their policy preferences according to their utility and attempt to approximate their most desirable outcomes. Assuming that the chief justice is in the majority, the model posits that the chief justice will pursue her policy goals by either assigning the majority opinion to herself or by selecting a judge in the majority coalition who has the closest ideological preferences to her own (Murphy 1964; Ulmer 1970; Rhode 1972; Rhode and Spaeth, 1976; Segal and Spaeth, 1993).

Students of the courts also assume that appellate-court judges play a similar strategic role. For example, Collins and Martinek (2011), show that judges' moderated ideology, measured as the ideological mean of their colleagues, is significantly correlated with individual votes. Different from the Supreme Court, however, appellate-court judges are also constrained by judicial hierarchies, such as a court *en banc* and the Supreme Court that have the power to overturn panel decisions. For example, Songer, Segal, and Cameron (1994) find that the appellate courts tend to be congruent with the decisions of the Supreme Court (but see Cross and Tiller 1997). Similarly, Hall (2009) finds that

panels consisting of three judges appointed by Democratic presidents quintupled the chances of the Supreme Court overturning the lower-courts' decision. Van Winkle (1997) also finds that judges are more likely to file a separate dissenting opinion when the ideological preferences of the majority panel are not congruent with the preferences of the circuit. To avoid reversal of the panel's decision, the presiding judge may, therefore, choose to select a more ideologically distant judge in order to satisfy the preferences of the circuit and the Supreme Court.

The presiding judge's decision to self-assign the majority opinion may also be heightened by the presence of politically salient cases or cases that have potential to set precedent. According to this view, "important cases raise the stakes for the presiding judge, elevating the importance of securing a decision and outcome that best comports with his or her policy views" (Malztman and Wahlbeck, 2004: 554). For example, research focusing on the Supreme Court finds that the chief justice is more likely to retain opinions in more important cases (Brenner 1993; Rohde 1972; Slotnick 1978). In the absence of salient cases, however, "judges are more likely to compromise on policy objectives and assign cases to judges who are ideologically more proximate to their own preferences" (Malzman and Wahlbeck, 2004: 554).

In addition to the pursuit of policy, a burgeoning line of research suggests that the presiding judge may also pursue non-policy objectives (Maltzman and Wahlbeck 2004; Rhode, 1972). Baum (1997), for example, argues that judges are motivated by other goals that may be more proximate, such as personal standing with court audiences, career, and collegiality on the court. These goals, according to Baum (1997), may also be related to the pursuit of more distant or "distal" or distant goals (Baum 1997: 16). For example, "a

judge may seek popularity in the community as a means to maximize the chances in re-election" (Baum 1997: 16). Thus, the pursuit of more proximate, non-policy objectives may ultimately allow judges to pursue good policy over the long run.

One goal of the presiding judge is to increase the size of the winning coalition and adhere to the norm of consensus. It has been well established that appellate court judges prefer panel unanimity to split decisions. In fact, appellate-court decisions are overwhelmingly unanimous, as the rate of dissent averages approximately 6 percent to 8 percent (Farhang and Wawro, 2004: 306). Not only does panel consensus establish a unified front on the interpretation of law, but it also creates a sense of institutional legitimacy, which is necessary for the execution of court orders by other governmental entities (Farhang and Wawro, 2004). To achieve this goal, the presiding judge may wish to select the judge who is the most ideologically distant. In the U.S. Supreme Court, for example, researchers find that the chief judge is more likely to assign the majority opinion to justices who are closer to the dissenting coalition or the median justice when the coalitions are especially fragile (Danelski, 1968; McLauchlan, 1972; Murphy, 1964; Rohde, 1972; Rohde and Spaeth, 1976; Ulmer 1970; but see Brenner, 1982; Brenner and Spaeth,1988; Rathjen, 1974). As a result, justices are able to moderate the positions of potential dissenters while also promoting greater compromise and unanimity.

The decision to assign the majority opinion may also be conditioned by the formal role of the chief judge. According to Hettinger et al. (2003), "the job requirements of the chief judge are varied and demands, as chief judges bear the ultimate responsibility for the efficient and effective operation of the entire circuit, including the work of all circuit, district, bankruptcy, and magistrate judges" (91). Given these additional administrative

responsibilities, the chief judge of each circuit may wish to reduce her overall workload by assigning the majority opinion to her panel colleagues (Owens and Black, 2009). For example, Hettinger et al. (2003) find that the chief judge is less likely to dissent from the majority opinion, reasoning that judges who take on this more formal role may wish to promote consensus and collegial relations in the court (99-101). Hettinger et al. (2003) also note that separate opinion writing can be a costly enterprise. Thus, the added costs of separate opinion writing can mitigate circuits' ability to dispose of cases.

In a similar vein, the chief judge may also wish to distribute the workload evenly in order to promote a friendly work environment and equity in the distribution of labor (Rehnquist 1987: 297; Spaeth, 1984; Slotnick, 1979). For example, studies focusing on the Supreme Court find that the chief judge is more likely to assign the majority opinion to judges who have not previously been assigned the majority opinion (Rehnquist, 1987; Spaeth, 1984; Slotnick, 1979). The chief judge may wish to assign cases to judges who either specialize in certain areas of the law (Brenner 1984, 1985; Brenner and Spaeth, 1986; Atkins, 1974; Cheng, 2007) or who have a proven track record of disposing cases quickly (Brenner and Palmer, 1988). In doing so, the presiding judge can improve the circuit's overall productivity and increase the quality of panel decisions.

The extant research on majority opinion assignments in the Supreme Court, and to a lesser extent, the U.S. Courts of Appeals, demonstrates that the presiding judge is motivated by policy and non-policy related objectives and that these objectives can influence how presiding judges assign opinions. However, little research has focused on the extent to which background characteristics, such as race and ethnicity, can influence the decision to assign the majority opinion. Not only do background characteristics

influence the behavior of judges (Gottschall, 1983; Scherer 2004-2005; Collins and Moyer, 2008), but research also demonstrates that they can influence the behavior of those in leadership positions. In Congress, for example, Rocca, Sanchez, and Morin (2011) show that both gender and the minority status can have a significant influence on committee assignments and decisions to move members of Congress up the committee ladder. Heberlig and Larson (2007) also demonstrate that the Republican Party was more likely during the 105th-108th Congress to reward minorities with leadership positions than other white party members. In the context of the courts, race and ethnicity plays an important role in the judicial appointment process, from the president's decision to nominate judicial candidates (Killian 2008; Solberg and Bratton, 2005) to the senate's decision to confirm those nominees (Hartley 2001; Bell 2002; Martinek et al. 2002; Martinek et al. 2005; Massie et al., 2004). In all, there is good reason to expect that the race and ethnicity of judges may also influence the decision-making of the presiding judge. In the following section, I provide a theory of race and ethnicity as it relates to majority opinion assignments.

Diversity, Panel Influence, and Majority Opinion Writing

Assuming that judges are motivated by non-policy objectives (Baum, 1997), there is good reason to believe that the presiding judge will assign the majority opinion to minority judges. There are three reasons to expect this outcome. First, the presiding judge may wish to select judges who reflect polarizing interests. For example, research focusing on the individual voting behavior of African American judges shows that racial and ethnic minorities not only vote differently than their white colleagues (Gottschall, 1983-1984; Scherer 2004-2005; Manning, 2004; Collins and Moyer, 2008; but see Walker and

Barrow 1985; Segal, 2000; Farhang and Wawro, 2004), but they are also more likely than their white colleagues to write separate dissenting opinions apart from the majority (Hettinger et al., 2003; 2004ab). By selecting an African American or Latino judge to write the majority opinion, therefore, the presiding judge can achieve increase the size of the winning coalition (Danelski 1968; McLauchlan 1972; Murphy 1964; Rohde 1972; Rohde and Spaeth 1976; Ulmer 1970; but see Brenner 1982; and Spaeth 1988; Rathjen 1974), ensure a unified front on the interpretation of law, and create a sense of institutional legitimacy in panel decisions (Farhang and Wawro, 2004).

A second reason racial and ethnic minority judges may be perceived to be more credible or expert across issues considered important to racial and ethnic minorities (Atkins, 1974). First, racial and ethnic minority judges can heighten perceptions of policy specialization by crystallizing issues of race and ethnicity to their panel colleagues (Mansbridge, 1999). For example, research focusing on panel effects demonstrates that the presence of a single minority judge on majority-white panels are more likely to rule in favor of the claimant (Kastellec, forthcoming; Farhang and Wawro, 2010). Thus, racial and ethnic minority judges can persuade their white-panel colleagues and cause them to vote differently than how they would otherwise. Second, racial and ethnic minorities can heighten perceptions of policy specialization through their mere presence (Atkins, 1974; Klein, 2003). According to this view, the presence of an African American or Latino judge can improve the quality of deliberation among their white-panel colleagues. For example, research focusing on jury deliberations demonstrates that white jurors on racially diverse panels are more likely to cite more case facts, make fewer factual errors, and appeal directly to Black jurors in the group to validate concerns of racism (Sommers,

2006). Thus, the presiding judge may choose to defer the majority opinion to her African American or Latino colleagues.

Finally, the desire to select judges who are most "credible" or "expert" may also be reinforced by racial and ethnic stereotypes. For example, Cruz and Molina (2009), in their study of Latina lawyers, find that Latinas in the legal profession are subject to "ethnic oriented roles," such as providing translations or practicing in areas such as immigration law (42). Similar acts of tokenism have also been found by Chavez's (2011) study of Latino lawyers –one of the most comprehensive surveys of Latinos in the legal profession to date. Her study finds that Latino lawyers experience tend to be used by professional organizations and law firms for more symbolic means (68; See also Cruz and Molina, 2009). In all, the three arguments suggest that the presiding judge will likely select minority judges to write the majority opinion in order to promote specialization in opinions and greater legitimacy through panel unanimity. Thus, I hypothesize the following:

H1: *African American and Latino judges will be more likely than non-minority judges to write the majority opinion.*

The above argument, however, may also be conditioned by the formal role of the presiding judge. As judges who come to the bench with different points of view (Goldman, 1978), both African American and Latino judges may prefer to write the majority opinion when they are the chief judge or the most senior member on the court. By assigning the majority opinion to themselves rather than assigning the majority

opinion to their white-panel colleagues, racial and ethnic minorities can take advantage of the presiding position and crystallize issues of race and ethnicity (Mansbridge, 1999). Based on this reasoning, I hypothesize the following:

H2: *Black and Latino judges will be more likely to write the majority opinion when they are also presiding over a panel.*

Data and Methods

The goal of this paper is to examine the extent to which the presiding judge is likely to select an African American or Latino judge to write the majority opinion. Focusing on the U.S. Courts of Appeals, I analyze decisions to assign the majority opinion across a universe of Title VII employment discrimination claims based on race and national origin between 2001 and 2009.[40] The unit of analysis, therefore, is the presiding judge's decision to assign the majority opinion.[41] All decisions are published in

[40] These decisions are collected between 1/1/2001 and 12/31/2009. Since President Clinton is responsible for appointing over half of the Latino judges in the U.S. Courts of Appeal, I chose to begin the analysis at the very end of his term in order to increase the number of decisions involving a Latino judge.

[41] Since I am interested in individual-level variables and because judges appear in the dataset multiple times within and across cases, I chose to cluster around each individual judge (e.g. Collins and Martinek, 2011; Collins and Moyer; 2008). Clustering around the judge also represents a more cautionary approach, as the size of the standard errors tend to increase for variables that measure judges' characteristics (Zorn, 2006). Since judges also respond to case-stimuli, I also re-ran the models by clustering around the case in Table C.1 of Appendix C. The results demonstrate no substantive differences with regards to the main independent variables.

the *Federal Reporter* and are accessible through Westlaw.[42] The dataset contains 486 cases. Since there are three judges per panel, the number of observations increases to 1,420.[43]

The total number of observations includes all judges belonging to the majority in order to capture the pool of the candidates who are eligible for selection by the presiding judge. All judges who dissent from the majority, therefore, are excluded from the analysis. The total number of observations also captures all circuits, including the Appeals Court for the D.C. circuit. According to internal rules and procedures, the presiding judge is either the chief judge or the most senior member of the panel in active

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[42] All published decisions involving race and national origin are accessible through the Westlaw Database, using Key Numbers Search. Cases are organized by subject and are located in the Civil Rights Folder. The use of published decisions is well established by judicial scholars (Manning et al., 2004), as they represent cases with higher precedential value and greater discretionary interpretation. This argument, moreover, is reinforced by studies that examine the behavior of judges across published and unpublished decisions (Keele, Malmsheimer, Floyd, and Zhang, 2009; Ringquist and Emmert, 1999).

[43] Since there are three judges per case, the original dataset contains 1,587 observations across 529 cases. The number of observations decreases to 1420 for several reasons. First, I exclude judges who dissent from the majority opinion (42 observations). Second, I exclude all decisions made in the 4th circuit (66 observations). Third, I exclude per curium decisions where the panel is acting anonymously (54 observations). I also exclude Asian American judges from the analysis in order to draw comparisons among white, African American, and Latino judges (2 observations). The number of observations also decreases due to missing data. Three observations were cases were excluded because it was difficult to determine the presiding judge (3 observations).

service. In the 4th circuit, however, "Opinion assignments are made by the chief judge on the basis of recommendations from the presiding judge of each panel on which the chief judge did not sit" (Federal Rules and Procedure, 2011; see also Cheng, 2007). Therefore, all cases from the 4th circuit are also excluded from the analysis. Finally, I exclude all *per curium* decisions from the analysis since the opinion represents the decision of the panel rather than any one particular judge in the majority. In these instances, moreover, the authors of the majority opinion are anonymous.

I focus on Title VII claims for several reasons. Following previous scholarship, I expect the decision to select racial and ethnic minorities will be conditional upon the presence of policy issues considered salient to racial and ethnic minorities (Songer et al., 1994). Despite the passage of the Civil Rights Act 1964 (Title VII), discrimination in the workplace continues to be an important problem facing both groups (e.g. Acs and Loprest, 2009; Coleman, 2003; Darity and Mason, 1998; Espino and Franz, 2002; Goldsmith, Hamilton, and Darity, 2006; Kenny and Wissoker, 1994). These experiences, moreover, have translated into divergent attitudes towards discrimination between whites and racial and ethnic minorities (Pew Center, 2005; Pew Hispanic, 2006; Rodriguez, 2008). Second, Title VII claims based on race and national origin offer judges more discretion to rule their sincere preferences (Scherer, 2004-2005), as studies demonstrate circuit court splits over the interpretation of Supreme Court precedent (Green, 1999, p. 997-998; Lanctot, 2000-2001). Finally, by narrowing the case selection to race discrimination cases in the workplace, I improve the ability to control for legal precedent, as discrimination cases based on discrimination, retaliation, and hostile work environment maintain similar legal frameworks.

Dependent Variable

The dependent variable is the *Majority Opinion Writer*. Judges are assigned the majority opinion are coded as "1." Judges who are not assigned the majority opinion are coded as "0." Accordingly, 34.30 percent (487) of the eligible judges in the dataset wrote the majority opinion and 65.70 percent (933) of the judges did not. Given the dichotomous nature of the dependent variable, I use Logistic Regression for all analysis (see Long and Freese, 2006).

Independent Variables

The main independent variables are *African American Judge* and *Latino Judge*. Both variables are dichotomous. I coded all African American judges as "1" (8.94%) and Non-Black Judges (91.06%) as "0". Similarly, I coded all Latino judges as "1" (4.51%) and Non-Latino Judges as "0" (95.49%). I also excluded all Asian American judges from the analysis since they account for a relatively small number of observations. Thus, white judges serve as the baseline for comparison. All information regarding judges' race and ethnicity can be found at the *Judicial Biographical Database* (Federal Judicial Center, n. d.).

Control Variables

In addition to the race and ethnicity of judges, I control for a host of variables that may play an important role in the assignment of the majority opinion. The descriptive statistics for each control variable can be found in Table 4.1. First, I control for *Female Judge*. Following work found on gendered institutions (Hawkesworth, 2003; Preuhs, 2006), I expect the presiding judge to be less likely to select female judges. *Female Judge* is coded as "1" and male judges are coded "0." Second, I control for judges' educational

backgrounds. In particular, I control for *Ivy League Education*, since the prestige of judges' education has been found to play an important role in the behavior of judges (Tate, 1981). Educational prestige may also serve as an additional indicator of having paramount credentials and expertise. This variable is coded as "1" if a judge graduated from one of the 9 ivy-league law schools. Judges are coded as "0" if they graduated elsewhere. Both background characteristics can be found at *Judicial Biographical Database* (Federal Judicial Center, n. d.).

Table 4.1: Descriptive Statistics

Variable	Mean	Std. Dev.	Min	Max
Female Judge	0.2000	0.4001	0	1
Ivy league Education	0.2394	0.4268	0	1
Chief Judge	0.0591	0.2359	0	1
Designate	0.0669	0.2499	0	1
Presiding Judge	0.3429	0.4748	0	1
Proximate Judge	0.3570	0.4792	0	1
Distance Circuit	0.2933	0.2664	0	1.087
Multiple Issue	0.5676	0.4955	0	1

The strategic model also predicts that the *Presiding Judge* will also be more likely to select herself to write the majority opinion in order to set the agenda and pursue her most preferred policy outcome. Following the internal rules and procedures of each circuit, the presiding judge is coded as "1" if the judge is either the chief judge during the time of the decision or the most tenured member on the panel who is in active service. By contrast, judges who are not the most tenured and who are identified as "senior status" by

the *Judicial Biographical Database* during the time of the decision are coded as "0."[44] It is important to note, however, that the *Federal Reporter* does not explicitly identify the presiding judge in the majority opinion. Although this is potentially problematic, this dissertation assumes that judges in the appeals court follow internal operating procedures and work within the guidelines as mandated by each circuit. To identify the presiding judge, I first determined judges' seniority by calculating judges' time on the bench from the date of commission. Afterwards, I determined, using the Judicial Biographical Database (Federal Judicial Center, n.d), whether a judge was acting as chief judge or in full service during the time of the decision

I also interacted *Presiding Judge* with the *Latino Judge, African American Judge,* and *Female Judge.* All multiplicative terms are coded as "1" to indicate the presence of a Latino, African American, or Female presiding judge. All non-presiding judges all coded as "0." In all, the under-representation of racial and ethnic minorities in the courtroom accounts for the disparity in majority opinion assignments between minority and white judges. While Latino judges presided over panels 22 times (1.55%), African American judges presided over the panel 24 times (1.69%). White judges, by contrast, ruled over a case 479 times (30.30%). Interestingly, neither Latino nor African American judges were chief judge at the time of the decision. Female judges, by contrast, presided over

[44] The extant research also suggests that salient policy issues can have a conditional effect on the presiding judges' decision to assign the majority opinion. Following Maltzman and Wahlbeck (2004), this variable is simply measured as the presence of an Amicus Curiae Brief. However, I am unable to account for this variable because there are an inadequate number of cases (N=20).

appellate-court panels with somewhat greater frequency and were responsible for assigning the majority opinion 88 times (6.20%).

The extant research also indicates that the presiding judge will choose judges whose ideological preferences are most proximate to their own (Rhode 1973; Maltzman and Wahlbeck 1996; 2004; Segal and Spaeth, 1993). Therefore, I control for the most *Ideological Proximate Judge* on the panel. This score is based upon Giles, Hettinger, and Pepper's (GHP) (2001), which I use to calculate the absolute distance between the presiding judge and the judge of interest.[45] Judges are coded as "1" if they have the closest ideology score to the presiding judge. All other judges are coded as "0." In addition to panel dynamics, the strategic interactions model also suggests that judges are constrained by institutions, such as Court *en banc* (Van Winkle, 1997). Therefore, I control for the *Circuit Distance*. *Circuit Distance* is measured as the absolute difference in GHP ideologies between the panel median and the individual judge.[46]

[45] Specifically, the coding scheme is based upon *Poole-Rosenthal Common Space* scores that measure the ideology of the president and home-state senators. In the absence of senatorial courtesy, a judge's ideology score is the same as the president's. If one home-state senator shares the same party affiliation as the president, then a judge's ideological score reflects the ideological score of the home-state senator. Finally, if two home-state senators share the same party affiliation as the president, then a judge's ideological score is the mean value of the senator's scores (see Giles et al., 2001).

[46]It is also appropriate to control for the ideological distance between the presiding judge and the ideology of the Supreme Court median. In this instance, I prefer to use Judicial Common Space scores developed by Esptein, Martin, Segal, and Westerland (2007) because they place judges in the Supreme Court and the U.S. Courts of Appeals in the same policy space. However, I am unable to control for this variable because the scores are only available between 1953 and 2006.

In addition personal characteristics and ideology, I expect the institutional role of judges to have an important effect on the distribution of majority opinion assignments. While there is reason to believe that the presiding judge will select herself to write the majority opinion, the institutional role of the *Chief Judge* may condition this effect. Charged with administrative responsibilities for their respective circuits, Hettinger et al. (2003) suggest that chief judges not only prefer smooth operations within the circuit, but they are less likely to incur the costs of separate opinion writing. Therefore, I expect the Chief Judge to be less likely to assign herself to the majority-opinion. Chief Judges are coded as "1" and "0" if otherwise. By contrast, I expect *Judge Designate*s to take on a greater role in the division of labor since appellate court judges rely on them to "facilitate the processing of an increasing workload" (Collins and Martinek, 2011L 181). *Judge Designate* is coded as "1" if they are Non-Appellate Court judges, such as District Court judges and judges from specialty courts, such as the International Trade Court. Appellate court judges are coded as "0." Both of these formal roles can be identified through the *Judicial Biographical Database* (Federal Judicial Center, n. d.).

The propensity to minimize the workload may also be conditioned by the complexity or size of the case (Rehnquist 1987; 297; Spaeth 1984; Slotnick 1979a). Therefore, I interacted the variables, *Chief Judge* and *Judge Designate*, with cases involving *Multiple Issues* or grievances. While I expect larger workloads to decrease self-assignments among *Chief Judges*, I expect the number of issues to be positively correlated with *Judge Designates*. Cases involving multiple issues are coded as "1." Cases involving a single issue are coded as "0."

Results

Table 4.2 presents the preliminary analysis that tests the main hypotheses at the bivariate level. The first column compares the percentage of time the majority opinion was assigned to African American, Latino, and white judges. The second column examines the extent to which minority and white judges self assign the majority opinion when they are presiding over a panel. Overall, the results show support for Hypothesis 1, which states that African American and Latino judges will be more likely to write the majority opinion. The differences, moreover, are quite substantial, as the proportion is approximately 10 percentage points greater for both minority judges. The preliminary results also indicate that assignments do not necessarily depend on minority judges being in the presiding position, as the table demonstrates no statistical differences between minority and white judges. Thus, African American judges and Latino judges are as likely to self-select and write the majority opinion as their white colleagues on the bench.

Table 4.2: Assigning the Majority Opinion to White, African American, and Latino Judges in the U.S. Courts of Appeals, 2001-2009

	All Judges		**Presiding Judge**	
	Proportion	*SE*	*Proportion*	*SE*
White Judge	0.3303*	0.0134	0.3628	0.0229
Black Judge	0.4173*	0.0439	0.5000	0.1042
Latino Judge	0.4375†	0.0625	0.4090	0.1072

Note: Table compares the proportion of a white judge being selected to write the majority opinion with the proportion of a minority judge being selected to write the majority opinion (t-test). †p <.10 two tailed test; *p <.05, two tailed test.

The next step in the analysis is to test whether the bivariate results continue to hold once alternative explanations of majority opinion writing are taken into account. Table 4.3 provides two distinct models. Model 1 is the constrained model that tests the first two competing hypotheses. Model 2 is the full model, which takes into account the additional multiplicative terms. These interaction effects not only test the extent to which the presiding judge can condition the likelihood of self-selection among minority and female judges, but it also considers whether the behavior of chief and designated judges are influenced by the size of the case.

Table 4.3: Logistic Model of Majority Opinion Writing in the U.S. Courts of Appeals, 2001-2009

	Model 1 (Constrained)			Model 2 (Fully Specified)		
Variables	**Coef.**	**Robust SE**	**Discrete Change (min → max)**	**Coef.**	**Robust SE**	**Discrete Change (min→max)**
Black Judge	0.512**	0.194	0.1208	0.480*	0.220	0.1129
Latino Judge	0.420	0.263	0.0989	0.606†	0.340	0.1446
Female Judge	-0.353*	0.168	-0.0760	-0.150	0.214	-0.0331
Ivy League Education	0.204	0.148	0.0465	0.212	0.152	0.0483
Chief Judge	-0.532**	0.179	-0.1088	0.053	0.310	0.0120
Judge Designate	-0.034	0.235	-0.0077	-0.178	0.350	-0.0386
Presiding Judge	0.567***	0.163	0.1298	0.706***	0.181	0.1619
Proximate Ideological Judge	0.528**	0.153	0.1205	0.529***	0.152	0.1205
Circuit Ideological Distance	0.099	0.258	0.0244	0.097	0.259	0.0237
Multiple Issues	-0.007	0.117	-0.0016	0.030	0.125	0.0067
Chief Judge*Multiple Issues				-1.217**	0.389	-0.2110
Designate Judge*Multiple Issues				0.358	0.500	0.0839
Latino Judge*Presiding Judge				-0.489	0.459	-0.0997
Black Judge*Presiding Judge				-0.092	0.481	-0.0203
Female Judge*Presiding Judge				-0.587†	0.323	-0.1186
Constant	-1.086***	0.159		-1.157***	0.164	0.1129
N		1420			1420	
Log pseudo likelihood		-895.18409			-889.85468	

Table 4.3 (cont.) Logistic Model of Majority Opinion Writing in the U.S. Courts of Appeals, 2001-2009

Correctly Predicted	65.42%	66.20%

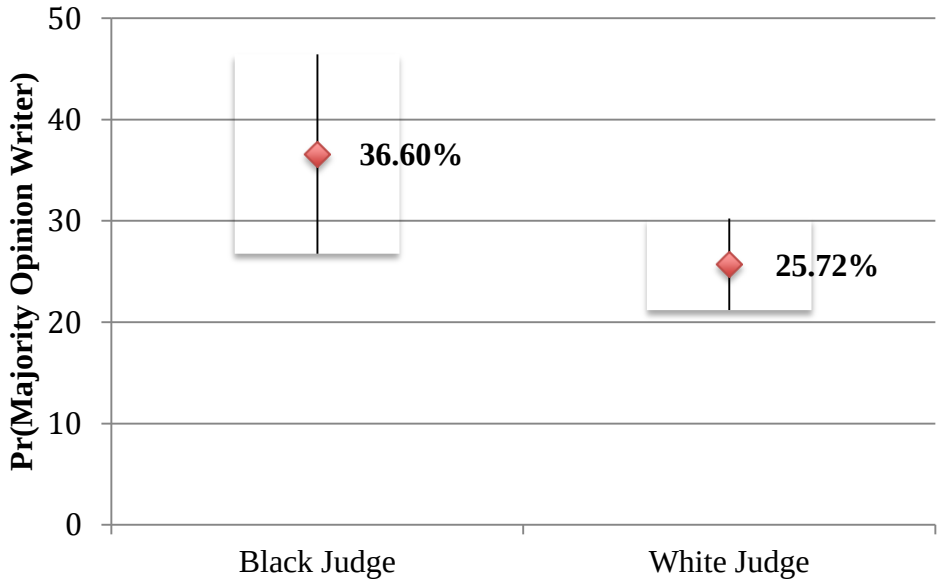
Note: The dependent variable is Majority Opinion Writer. This model excludes the 4th circuit, judges who dissent from the majority opinion, and per curium decisions. It also excludes Asian American judges to ease the interpretation of the results. Observations are clustered around Case. There are 285 clusters. †$p < .10$ (two-tailed); *$p<.05$ (two-tailed); **$p<.01$ (two-tailed); *** $p<.001$(two-tailed).

In comparison to the preliminary analysis, model 1 provides only partial support for Hypothesis 1, which states that African American and Latino judges will be more likely to write the majority opinion. For example, *African American Judge* is significant and positive ($p < .01$), suggesting that the presiding judge is more likely to select an African American judge to write the majority opinion in Title VII employment discrimination cases. Figure 4.1 shows that the likelihood of selecting an African American judge is quite substantial. After holding all independent variables to their respective means and modes, the figure demonstrates that the probability of assigning the majority opinion to an African American judge is 36.60 percent, nearly 11 percentage points greater than the likelihood of selecting a white judge. These findings confirm the argument that African American judges not only represent polarizing interests, but they provide cues of policy specialization across Title VII employment discrimination cases.

Contrary to expectations, however, model 1 demonstrates that *Latino Judge* is insignificant. Thus, Latino judges are no more likely than non-Latino judges to write the majority opinion in Title VII employment discrimination cases. Thus, Latino judges are neither marginalized nor viewed as specialists or stereotyped across discrimination cases by their panel colleagues. One possible explanation for this outcome is that African American judges may simply pose a greater threat to panel consensus than Latino judges. For example, research demonstrates that African American judges are more likely than white judges to vote in favor of the claimant in race discrimination cases and criminal cases, including search and seizure suits (Gottschall 1983-1984; Scherer 2004-2005; Collins and Moyer, 2008). Latino judges, however, demonstrate much different behavior, as Manning (2004) finds that Latino judges are no more likely than their white colleagues

to rule against the claimant in discrimination claims. Chapter 2 of this dissertation also builds on this research by demonstrating that Latino judges are less likely than non-Latino judges to rule in favor of the claimant in employment discrimination claims based on race and ethnicity. Consequently, Latino judges may be perceived as less threatening to panel consensus.

Figure 4.1: Probability of Writing the Majority Opinion in Discrimination Cases (2001-2009)



Note: Dependent variables is majority opinion writer. Depicts 95% confidence intervals

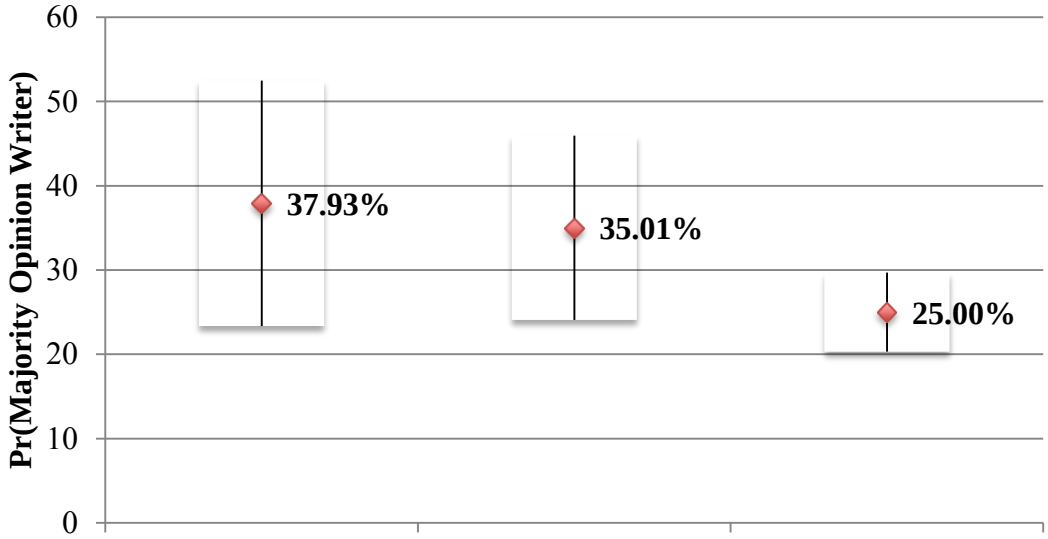
Model 2 next tests Hypothesis 2, which states that Black and Latino judges will be more likely to write the majority opinion when they are also the presiding judge. As judges who come to the bench with "different points of view" (Goldman, 1973), African American and Latino judges may prefer to write the majority opinion to crystalize issues

of race and ethnicity. Otherwise minority judges may lose their opportunity to shape policy and maximize their benefits. To examine this possibility, I interacted *Latino Judge* and *African American Judge* with the variable, *Presiding Judge*. The two interaction effects, however, are insignificant in the model, suggesting that the formal role of the presiding judge does not have any conditional effect on the self-assignment of African American and Latino jurists. Given the previous results, Black judges may have no need to increase the size of their already demanding workload, especially since they are more likely to write the opinion across discrimination cases.

The main independent variables in model 2, however, show important differences among non-presiding judges. For example, *Black Judge* remains significant in the model ($p < 01$), suggesting that non-presiding, African American judges are more likely than their non-presiding, white colleagues to write the majority opinion. Interestingly, though, the inclusion of the interaction effect also changes the significance level of the main independent variable, *Latino Judge* ($p < .10$). Thus, Latino judges are more likely than non-Latino judges to write the majority opinion when both are not presiding over a case. Figure 4.2, moreover, illustrates that the probability of selecting a Black or a Latino over a white judge is quite substantial. Holding all other control variables to their respective means and modes, the figure shows that the probability of selecting a Latino or African American judge to write the majority opinion is 37.93 and 35.01 percent, respectively. In comparison to minority judges, though, the probability of selecting a white judge to write the majority opinion is only 25 percent. In all, the findings provide further evidence to support the argument that presiding judges prefer panel unanimity to split decisions and rely on ethnic cues and stereotypes to identify court specialists. It also suggests that these

cues may give African American and Latino judges a distinct advantage in crafting policy.

Figure 4.2: Probability of Writing the Majority Opinion Among Non-Presiding Judges in Discrimination Cases (2001-2009)



Note: Dependent variable is majority opinion writer. Depicts 95% confidence intervals

In addition to the main independent variables, several of the control variables found in model 1 significantly influences the decision to assign the majority opinion. Interestingly, the gender of the judge can play an important role in the decision to assign the majority opinion. Although *Female Judge* is significant ($p < .05$), the coefficient is negative, suggesting that the presiding judge is less likely to assign the majority opinion to their female colleagues. In model 2, *Female Judge* was also interacted with *Presiding judge* to examine whether the direction of the coefficient would change once given the

opportunity to assign the opinion. However, the sign of the coefficient remains significant and negative ($p < .10$), suggesting that female jurists in the presiding position are not only less likely to write the majority opinion, but they are also more likely to distribute the majority opinion to others. While female jurists may pursue discrimination cases to promote a greater equality (Songer et al., 1994), this goal does not necessarily translate into other forms of participation, such as majority opinion writing. Ultimately, the distribution of majority opinion may be seen as one way to pursue other goals, such as collegial relations, in a court dominated by male jurists.

Following previous research that assumes that judges are policy maximizers, both *Presiding Judge* and *Proximate Judge* are significant and positive ($p <. 001$; $p < .01$). Taken together, the two findings suggest that the presiding judge and the judge in the most proximate ideological position to the presiding judge are more likely to write the majority opinion than judges who are the most ideologically distant. Both models also demonstrate that the substantive effect is slightly greater for judges in the most proximate position than the presiding judge. In model 1, for example, the change in the predicted probability for the presiding judge is 12.98 percent, about 1 percent greater than the most proximate member on the panel. This makes intuitive sense, especially since the presiding judge is the most tenured judge in active service and charged with dividing labor equally among the circuit court panelist. This behavior, moreover, is much different than the Chief Justice of the Supreme Court who has a preference to assign the majority opinion to her more ideologically compatible colleagues (Maltzman and Wallbeck, 2005). The difference in the overall workload may provide one explanation for this outcome. Since the lower federal courts are considered the workhorses of the federal

judiciary, the presiding judge may choose to write the majority opinion to improve the efficiency of the court and accommodate an ever-increasing workload.

The results also demonstrate that the formal roles can significantly influence decisions to write the majority opinion. In model 1, for example, *Chief Judge* is significant and negative ($p < .01$), suggesting that chief judges are less likely to write the majority opinion. In charge of the day-to-day operations of the circuit, the results provide further evidence that chief judges must be able to divide their time with other forms of participation on the court. In model 2, however, *Chief Judge*Multiple Issues* is significant and negative ($p < .01$), suggesting that likelihood of deferring the majority opinion to a panel colleague depends on the number of issues or grievances involved in a case. In other words, chief judges are willing to part ways with the majority opinion if the assignment becomes too burdensome. *Judge Designate*, including the interaction effect, *Judge Designate*Multiple Issues*, is insignificant in the model. Therefore, judges sitting by designation are no more likely than Appeals Court judges to write the majority opinion.

Conclusion

This chapter examined the extent to which the presiding judge assigns the majority opinion to African American and Latino judges in cases dealing with employment discrimination. It not only extends research that focuses on majority opinion writing in the U.S. Courts of Appeals, but it also moves beyond more common predictors of opinion writing found in the Supreme Court literature by focusing on the background characteristics of judges. More specifically, this chapter argued that the presiding judge, in an effort to achieve panel unanimity and improve perceptions of legitimacy of the

panel's decision, will be more likely to write select an African American or Latino judge to write the majority opinion As judges who come to the bench with different points of view, this chapter also tested the hypothesis that racial and ethnic minority judges will take advantage of the presiding role by writing the majority opinion themselves.

This chapter finds partial support for the latter of the two arguments. Specifically, it shows that the race and ethnicity of judges can have an important impact on the decision-making of the presiding judge in Title VII discrimination cases. In the context of race, the presiding judge is more likely to assign an African American judge to write the majority opinion, but not necessarily Latino judges. Only when non-presiding Latino judges and non-presiding white jurists are compared against one another do significant differences emerge. In this instance, Latino judges are more likely than to write the majority opinion when compared to other judges who do not have the power to assign the majority opinion. The second major finding also shows that these differences are not based upon the formal role of the presiding judge and power to assign majority opinions. Rather, the results demonstrated that African American and Latino judges in the presiding position are no more likely than their white colleagues to write the majority opinion.

In all, the results have important implications for the substantive representation of interests. Based on life experiences, previous research suggests that minority judges bring with them a different voice to the bench, such as a sense of equitable justice (Goldman, 1978-1979). Not only do minority judges vote differently than their white colleagues (Gotschall, 1983-1984; Scherer 2004-2005; Collins and Moyer, 2008), but they are also more likely to write a separate dissenting opinion, apart from the majority panel

(Hettinger et al. 2004ab). While voting on the merits gives judges the opportunity to take positions on policy issues, judges can also file separate dissenting opinions to challenge the legitimacy of a panel's decision (Hettinger et al., 2003).

In addition to these other forms of participation, the majority opinion provides another opportunity to be responsive. In comparison to separate opinion writing, the majority opinion is at is at the core of the appeals courts' ability to make policy (Songer and Segal 1993). Over the years, the Supreme Court has made it more difficult for appellants to prove that an employer's decisions were based on racial animus and not on some other non-discriminatory reason (Selmi, 2000-2001). By and large, this is because employees must rely on circumstantial evidence to prove that the employer's reason their behavior was not legitimate and pretext for discrimination. In other words, an employer's decision was not pre-meditated with racial animus. This outcome is also reinforced by inherent biases in the federal court system that place racial and ethnic minorities at a distinct disadvantage (Selmi, 2000-2001). Consequently, the probability of winning a case has been especially difficult for racial and ethnic minorities (Selmi, 2000-2001). By authoring the majority decision, however, minority judges can moderate the content of the decisions and promote policies that provide minorities appellants with greater opportunities to win discrimination claims. In this chapter, I find evidence to suggest that minority judges have opportunities to be more responsive to racial and ethnic minorities, as African American and Latino judges are more likely to write the majority opinion in Title VII cases.

CHAPTER 5

CONCLUSION

> *If we really want to talk in terms of creating equal justice in our courts, cities and across the whole spectrum of options, it means that we have got to be there; we have got to be a counterbalancing influence, to point out to others what have been the highly significant unarticulated premises which often are absolutely racist which they may not understand.* ~ Judge A. Leon Higginbotham

The Framers of the U.S. Constitution sought to establish a counter-majoritarian institution that places important checks on legislative and executive authority. Through the power of judicial review, federal judges can declare actions of the legislative and executive branches invalid or unconstitutional. This ability to ensure the rights of the minority, moreover, is reinforced by the independence of the court. Insulated from internal and external political influences, federal judges are supposed to make impartial decisions that are based on the facts of the case and guiding legal principles, such as Framers intent, the Constitution, and legal precedent. In practice, however, the behavior of federal judges is much different. Although guiding legal principles remain important for understanding judicial decision-making to some degree (Bailey and Maltzman, 2011), a wealth of scholarship demonstrates that federal-court judges not only rely on existing legal principles to pursue their policy goals (Segal and Spaeth, 1993; Rhode and Spaeth, 1976; Rhode, 1972), but they also have a tendency to defer to the will of the majority by being directly responsive to public opinion (Mishler and Sheehan, 1993, 1996). In this context, the judicial branch has been often referred to as a "political institution" that represents the will of the majority rather than one that is counter-majoritarian as the Framers intended (Dahl, 1957).

These majoritarian tendencies have been especially harmful towards specific social groups in the U.S., including racial and ethnic minorities (Morin, 2005). From slavery and land rights, to issues of citizenship and inclusion in the U.S. political system, the Supreme Court has been selective in its willingness to grant full and equal rights among all individuals in the U.S. The history of the federal courts as it relates to issues of race and ethnicity has sparked much debate over the social composition of the courts (Goldman, 1978-1979; Walker and Barrow, 1985). Critics of descriptive representation, for example, generally take the position that judicial appointments should be based on merit selection alone, arguing that selection of minorities can lead to heightened racial and ethnic classifications, a decrease in the overall quality of decision-making, and extra-legal influences that mitigate a more independent judiciary (see Goldman, 1978-1979). Others, however, argue that racial, ethnic, and gender diversity in institutions is a normative good (Mansbridge, 1999; Goldman, 1978-1979). Not only can the appointment of racial and ethnic minorities improve positive attitudes towards government, but African American and Latino judges may also bring with them different perspectives to the bench that can compensate for past and continued injustices.

This dissertation entered into the debate by providing one of the first comprehensive studies of African American and Latino judicial behavior in the U.S. Courts of Appeals. Previous research has a tendency to analyze only one minority group, such as African American judges across search and seizure cases (e.g. Scherer, 2004-2005) and Latino judges across employment discrimination cases (Manning, 2004). Although certainly fruitful for understanding the role of descriptive representation in the courtroom, the inability to control for both racial and ethnic groups across the same data

has made it difficult to examine how racial and ethnic minority judges behave relative their white colleagues on the bench and to one another. By controlling for both the race and ethnicity of judges, therefore, this dissertation sought to test whether theory, which has a tendency to assume that minority judges are monolithic in their behavior, is applicable to African American and Latino judges across the same set of data.

The appellate courts provide an excellent opportunity to examine African American and Latino Judicial behavior. First, appellate-court judges are considered to be important policy makers where they "are called upon to monitor the performance of federal district courts and agencies and to supervise their application and interpretation of national and state laws" (Carp, Stidham, and Manning, 2004: 39-40). Second, the appellate courts are divided into 12 regional circuits, which allows for greater diversity within racial and ethnic groups. Finally, the collegial nature of the courts provides opportunities to examine how racial and ethnic minority judges interact with their panel colleagues. Random panel assignments also ensure that racial and ethnic minorities interact with different colleagues within their circuit. Given this institutional setting, therefore, this dissertation proposed three main research questions that takes into consideration African American and Latino judicial behavior across both individual and panel level settings:

1) Do African American judges come to the bench with a different and more liberal voice?

2) Can African American and Latino judges influence panel outcomes that favor claimants who come to defend or appeal their case?

3) Are African American and Latino more likely to write the majority opinion?

To address these research questions, I relied on two overarching theories: descriptive representation and small group theory that focuses "panel effects." While the theory of descriptive representation was important for explaining how African American and Latino judges vote across salient policy issues, small group theory provided a framework for understanding how racial and ethnic minority judges could overcome the institution of majority rule and influence their panel colleagues. This dissertation also contributed to our understanding of African Americana and Latino judicial behavior by focusing on those factors that condition the judicial behavior. While the presence of salient policy issues provides one condition, this dissertation emphasized the role of claimant effects or co-racial and co-ethnic cues that can mediate the behavior of African American and Latino judges. Based on these three arguments, I expected African American and Latino judges to not only behave differently than their white colleagues, but I also expected racial and ethnic minority judges to influence panel outcomes and the decision to assign the majority opinion.

Summary of Results

Overall, the results from this dissertation provide partial support for my hypotheses. In the context of individual voting behavior, African American judges are more likely than non-Black judges to vote in favor of the claimant, especially when a Black claimant is present. Latino judges, on the other hand, have a tendency to rule in the opposite direction, as they are less likely to rule in favor of co-ethnic claimants and non-Latino claimants alike. These differences in behavior also continue to hold once the social composition of the panel is taken into account, as African American and Latino judges vote differently than their white panel colleagues on majority-white panels.

Interestingly, the results also demonstrate that African American and Latino judges can influence the voting behavior of their white-panel colleagues. Through mechanisms of deliberation, specialization, and strategic bargaining, white judges sitting on racially and ethnically diverse panels are likely to conform to the preferences of their Black and Latino colleagues. In all, these differences in voting behavior suggest that discrimination, which is central to understanding voting behavior among minority judges, may work differently for both African American and Latino judges.

The results with regards to Latino judges should be interpreted with some caution, however. Due to the under-representation of Latino judges, there was little opportunity for Latino judges to rule on co-ethnic claimants. First, the results are only interpretable insofar that they explain the behavior of Latino judges who have participated in discrimination claims between 2001 and 2009. Of the 14 Latino judges included in this study, only 5 Latino judges participated in a claim involving another Latino. Regardless of their party affiliation, though, a clear majority of the decisions were less than favorable towards other Latinos. Second, the results are largely driven the presence of an outlier judge. In fact, a single Latino judge, Judge Carlos Lucero of the Tenth Circuit, was responsible for many of the decisions involving another Latino claimant. Despite being appointed by President Clinton, a Democratic president, and having an ideology score of -.408 (liberal), Judge Lucero voted against another Latino 100 percent of the time. Given this more extreme behavior and the tendency to rule against other Latinos claimants, I also decided to include a separate control variable for Judge Carlos Lucero in the models focusing on individual voting behavior. However, the tendency to vote against the claimant for Latino judges continues to hold.

The results from this analysis also indicate that African American and Latino judges are not marginalized in the U.S. Courts of Appeals. Following small group theory, which emphasizes social psychology explanations of behavior, the results demonstrate that the presence of a single African American judge on a panel significantly increases the probability of a decision that favors the claimant in Title VII discrimination claims. However, the propensity to rule in favor of the claimant depends on the presence of a co-racial claimant. Contrary to expectations, ethnically diverse panels have a tendency to decrease the probability of a favorable outcome, regardless of having another Latino claimant present. Taken together, the two findings suggest that claimant effects can have varying effects on panel outcomes. In terms of co-racial cues, the presence of a Black claimant can improve the quality of deliberation among African American judges. Since Black judges tend to sit on majority-white panels, the results also suggest that racially diverse panels, coupled with the presence of a Black claimant, can crystallize issues of race among white jurists. The combined presence of a Latino judge and Latino claimant, however, has a much different effect, as ethnically diverse panel are less likely to rule in favor of other Latinos. Thus, Latino judges' tendency to rule against the claimant may motivate their white colleagues to rule against the claimant more generally.

As judges who come to the bench with different points of view, this dissertation also tested the hypothesis that stated African American and Latino judges will be more likely to write the majority opinion in Title VII employment discrimination cases. The results show that the race and ethnicity of judges can have an important impact on the decision-making of the presiding judge. In the context of race, the presiding judge is more likely to assign an African American judge to write the majority opinion, but not

necessarily Latino judges. Only when non-presiding Latino judges and non-presiding white jurists are compared against one another, do significant differences between the two groups emerge. The second major finding also shows that the propensity to write the majority opinion is not based upon the formal position of the presiding judge. Instead of using the power of the presiding position to their advantage, the results shows that African American and Latino judges are as likely as their white colleagues to distribute the majority opinion to their panel colleagues.

Explaining Latino Judicial Behavior

The results from the analysis demonstrate that African American and Latino judges are not monolithic in behavior. Several explanations have been offered to explain why there would be similarities in behavior. However, none fully explain the voting behavior of Latino judges towards Title VII claims. First, the socialization hypothesis maintains that minority judges may suppress their most preferred preferences. According to this view, judges are subject to judicial norms and collegial peer-pressure that would cause judges to conform to more dominant preferences within the circuit (Carp and Wheeler 1972; Wasby, 1989). While the socialization hypothesis has been reinforced by research that focuses on acclimation effects of freshman judges within the U.S. Courts of Appeals (Martinek and Collins, 2008; Hettinger, Martinek, and Lindquist, 2004), this argument has also been supported by more recent research that surveys Latinos in the legal profession. For example, Cruz and Molina (2009) find that "experiences with discrimination have led Latinas in the law to mask or disavow their identity in order to assimilate within the dominant culture of their workplaces" (50). Similarly, Chavez (2011) describes how a Latino lawyer spent his entire career trying to fit into the

dominant culture by becoming the "white guy" (43). Although the respondent preferred his carnitas and Budweiser to cheese and crackers, the respondent felt his attempt to fit in was simply a part of business. After 20 years in of trying to play "the game," the respondent had finally decided that he had enough (Chavez, 2011: 43).

Second, Latino judges may simply represent a special cadre within their own ethnic group (Manning, 2004: 11). According to this view, Latino judges will not rule differently than white judges because they do not share the same experiences as the rest of the Latino population. As judges in the federal judiciary, their socio-economic profile does not mirror the rest of the Latino population. For example, Latinos jurists are highly educated, hold professional occupations, such as judgeships at the state and local level, and earn more income prior to being appointed to the bench (Goldman 1997; Slotnick 1983; Goldman and Saronson, 1994-1995). Moreover, Gryski, Zuk, and Barrow (1994) find that Latino appointments are most strongly influenced by socio-economic status, as political elites in charge of the appointment process have a tendency to respond to well-to-do communities.

Third, attitudes or ideological considerations may play a greater role than background characteristics, such as race and ethnicity. Thus, Latino judicial behavior may simply be a function of the appointment process and the ideological preferences of the president and home-state senators. Indeed "scholars have noted the increasing politicization of judicial appointments as interest groups have become more involved in the judicial selection process, and Presidents increasingly seek and nominate appointees who loosely reflect the political views of the administration" (Manning, 2004: 3; see also Caldeira and Wright 1995). To consider this possibility, therefore, I controlled for

ideology in the post-estimation results. However, the results from this analysis demonstrate that judges' ideology does not have any conditional effect on the behavior of African American and Latino judges.

One alternative explanation that has yet to be fully explored focuses on intra-group relations involving authority-subordinate relationships. Following research that focuses on gender, group roles, and mentoring in the workplace, Williams and Locke (1999) hypothesize that female supervisors are more likely to perceive a sense of mentorship with their female subordinates (see also Euwema and Van de Vliert, 1994). Contrary to expectations, however, the authors find that female supervisors perceived the least amount of mentoring behavior towards other female subordinates. To explain this unintended result, the authors argued that women might treat their subordinates harsher because they wish to become acclimated to the leadership styles that are favored in male-dominated organizations. Facing barriers to upward mobility, this argument suggests that female managers take on more masculine-oriented behaviors that emphasize competitiveness, aggression, and independence (Wood, 1997). As a result, female managers are likely to become more direct and provoke a negative evaluation with their subordinates (Wood, 1997). For example, Euwema and Van de Vliert (1994) find that female managers are more likely to use forceful tactics with other female subordinates during times of conflict. Ashcrarft and Pacanowsky (1996) also find that females in female-dominated offices are more likely to distance themselves by claiming to not only prefer their male coworkers to their female colleagues, but also prefer more masculine standards.

Given this dissertation's focus on intra-group relations, the above argument may

also apply to Latinos jurists ruling on other Latino claimants. In comparison to African American judges, the appointment of Latino jurists is relatively recent phenomenon. However, racial and ethnic minorities have a tendency to experience barriers to upward mobility, as the duration for Senate confirmation takes twice as long for minority appointees than whites (e.g. Nixon and Goss, 2001). Therefore, Latino judges may very well experience similar acclimation effects that provoke more negative responses to co-ethnic claimants. As Justice Thurgood Marshall noted, "members of minority groups frequently respond to discrimination and prejudice by attempting to disassociate themselves from the group, even to the point of adopting the majority's negative attitudes towards the minority" (Schaerer, 2008: 5). In all, this argument is reinforced by two studies that focus on Latino judicial behavior. In the U.S. District Courts, Manning (2004) finds that Latino judges tend to rule against the claimant across criminal and civil rights and liberty cases. At the state level, Holmes et al. (1993) also find similar results, as Latino judges are more likely than their white colleagues to rule against Latino and white defendants. Taken together, the findings in this dissertation suggest that Latino judicial behavior holds across both federal and state courts.

Explaining Differences in Behavior between Latino and African American Judges

In all, these differences in judicial behavior beg the question: why do African American judges behave differently than Latinos judges? Perceptions of linked fate may be the one possible answer to this question. The concept of linked fate refers to the belief that one's own life chances are connected to their racial group (Dawson, 1994: 5). Focusing on the African American experience in the United States, Dawson (1994) argues that the legacy of slavery and shared experiences with discrimination have led

Blacks to substitute their individual preferences in exchange for group preferences (see also Tate, 1993). Also known as the Black Utility Heuristic, this process is triggered by the presence of racial cues (McClain et al., 2009), including explicit messages across non-racialized policies (White, 2007). So long as race remains important, Dawson (1994) suggests, it is efficient for African Americans to believe that their individual fates are tied to the Black community (61).

While the concept has been used by scholars to explain African Americans' near-monolithic support for the Democratic Party and policies supporting the African American community (Dawson, 1994; Hochschild, 1995; McClain, Johnson Carew, Walton, and Watts, 2009; Sanchez, 2006b; Tate, 1993), there is good reason to believe that linked fate may play an important role in the behavior of African American judges. One of Dawson's (1994) more notable findings is that perceptions of linked fate transcend class divisions. From catching a taxi at night to being stopped by the police, the finding suggest that African American elites are as likely as other Blacks to experience random acts of racism (Espinoza and Harris, 1997). In 1993, for example, an African American judge was arrested on suspicion for using a stolen credit card at an upscale shopping mall in New Jersey. Despite showing his identification and adamantly denying the charges, the police took him into custody where he was chained to a wall for three and a half hours (Margolick, 1994). Since middle-class status does not necessarily decrease the likelihood of encountering discrimination (Ifill, 2000: 437), African Americans, including African American judges, are likely to continue to view race as salient.

Perceptions of discrimination are also apparent among African Americans in the legal profession. For example, over 90 percent of African American lawyers believe that racial bias exists in the justice system and that racism in the justice system is the same or greater than other segments of society (Carter, 1999). These attitudes are also shared among African American judges. In comparison to 83 percent of White judges, for example, only 18 percent of Blacks share the belief that black litigants are treated fairly in the justice system (Lyels, 1997: 237). Perceptions of discrimination, moreover, are reinforced by two-thirds of lawyers who say they have personally witnessed racial bias in the legal system over the past three years (Carter, 1999). Since perceptions of linked fate transcend class divisions and because African Americans in the legal profession continue to view race as salient, there is reason to believe that African American judges will be more likely than white judges to support policy issues affecting the African American community

More recently, scholars of group identity have also applied the concept of linked fate to pan-ethnic groups, including Latinos (Barreto, Masuoka, and Sanchez, 2008; Sanchez, 2006ab; Sanchez and Masuoka, 2010; Stokes, 2006; Masuoka, 2006; Miller, Gurin, Gurin, and Malanchuk, 1981). In comparison to African Americans, though, research suggests that the pathways to linked fate are much different for Latinos (Sanchez and Masuoka, 2010; Masuoka, 2006), as Sanchez and Masuoka (2010) find income to be negatively correlated with perceptions of linked fate. Different from African Americans, therefore, wealthier Latinos are less likely to believe their life chances are inherently linked with other Latinos. These last findings may also apply to Latinos judges, especially since the background characteristics of Latinos in the federal courts do not

mirror the rest of the Latino population.

Implications for Substantive Representation

The results from this dissertation have important implications for the relationship between descriptive and substantive representation. Since the early 1990s, there has been much debate over the merits of descriptive representation and whether or not diversity in representative institutions can translate into substantive representation of interests for racial and ethnic minorities. Most notably, Swain (1993), in her study of congressional representatives, finds that white Members of Congress can represent Black constituents as effectively as African American MCs. Although there is value in descriptive representation, Swain (1993) goes on to reason that it is the goal of re-election that motivates the behavior of representatives, regardless of their race and ethnicity. Since this seminal work, however, the research focusing on descriptive representation generally finds that racial and ethnic minorities, including Latinos and African American representatives, are more responsive by pursuing policies that promote the interests of their respective groups at the national (Casellas, 2011; Cannon, 1999; Whitby, 1997; Kerr and Miller, 1997; Cameron, Epstein, and O'Halloran, 1996; Tate, 2003; Welch and Hibbing, 1994; but see Swain, 1993; Hero and Tolbert, 1995); and local levels of government (Casellas, 2011; Bratton and Haynie, 1999; Bratton, 2006; Kerr and Mladenka, 1994; but see Mladenka, 1989). Contrary to Swain's (1993) research, therefore, this research ultimately suggests that racial and ethnic minorities can do a better job at representing their respective communities.

This dissertation adds to this larger discussion of descriptive and substantive representation by focusing on the behavior of African American and Latino judges in the

lower federal courts. The findings from this dissertation show that some descriptive representatives (i.e. African American judges) are responsive to their respective communities in Title VII employment discrimination cases. Over the years, there has been a substantial increase in the number of employment discrimination claims. For example, the number of cases exponentially grew from 8,303 in 1991 to 23,772 in 1998, representing a 286 percent increase. Title VII cases, moreover, constitute the bulk of employment discrimination cases (Clermont and Schwab, 2009, 2004). In comparison to other types of claims, such disability and age discrimination, claims based on employment accounted for 68.38 percent (64,122) of all Title VII claims between 1998 and 2006.

However, the likelihood of winning employment discrimination claims has been extremely low (Selmi, 2001; Selmi, 2011; Clermont and Schwab, 2009, 2004). Between 1979 and 2006, federal plaintiffs won 15 percent of job discrimination cases while the win rate for all other civil cases is about 51 percent (Clermont and Schwab, 2009). In Title VII discrimination claims, the win rate among plaintiffs was 10.88 percent, about 4 percentage points lower than employment discrimination claims combined. Despite these small successes, however, appellate-court judges typically reverse these pro-plaintiff decisions, rendering the total number of plaintiff success far lower than those coming out of the U.S. District Courts. Between 1988 and 2000, for example, the U.S. Courts of Appeals reversed 42.76 percent of the District Court decisions. By contrast, only 10.12 percent of the decisions were reversed favoring the defendant. (see also Clermont and Schwab, 2004). This dissertation, moreover, shows that the success rate was about 25% for Title VII claims filed between 2001 and 2009.

The declining number of Title VII claims, coupled with the propensity to reverse decisions in favor of the defendant, has caused some to speculate about why discrimination claims are so hard to win (Selmi, 2001). In the context of Title VII cases, Selmi (2000-2001) reasons that negative attitudes towards race have served as a frame for analyzing evidence, drawing inferences and conclusion based on ambiguous evidence (Selmi, 2000-2001). Assuming that the role of discrimination has sharply diminished, this mindset has caused judges to be more hesitant to draw inferences of racial discrimination based on circumstantial evidence, even though the court has long recognized that race discrimination is generally more subtle (Selmi, 2000-2001, 2011).[47] Not surprisingly, employees and their lawyers have become discouraged at their chances of winning, "as the plaintiff-side's learning curve has dictated a decline in the filings" (Clermont and Schwab, 2004, 188). For example, Joe Whatley Jr., an attorney for New York said, "We will no longer take individual employment-discrimination cases, because there's such a high likelihood of losing" (Koppel, 2009).

[47] For example, Melvin Hicks, an African American male, was working as a supervisor for a correctional facility. Contrary to common practice, Hicks was disciplined for infractions of his subordinates and was singled out following a change in management. The management also wanted to reassert control of the prison facility in response to a report suggesting that having too many African American supervisors might have had a deleterious effect on inmate discipline. Despite mounting evidence against the correctional facility, the Supreme Court ruled that the reasons were due to personal rather than racial animus. Justice Souter, however, dissented from the opinion. He argued that, "a different judge, working through a different mindset, one where discrimination may be more readily accepted as an explanation, would have interpreted the evidence differently" (see Selmi, 200-2001).

Diversity in the courts, however, can help compensate for such difficulties in two important ways. First, African American judges, can contribute to the development of Title VII policies by crystallizing issues of race and ethnicity to their panel colleagues. Assuming that African American judges are on the winning side of the panel decision, they will have greater opportunities to challenge the content of majority opinions that can act as possible barriers to more winnable claims in the future. Second, they will have greater opportunities to write the majority opinion. Indeed, the majority is at is at the core of the appeals courts' ability to make policy (Songer and Segal, 1993). Judges can use the majority opinion to clarify the interpretation of law, not only to help fulfill their error correction responsibilities, but also to set legal precedent, which serves as important guidelines for lower federal courts and administrative agencies. The majority opinion also gives judges in the presiding position the opportunity to set the policy agenda (Maltzman and Wahlbeck, 2004: 551). This agenda setting-power is reinforced by internal rules and procedures that give the authoring judge the power to circulate the initial draft to her panel colleagues for approval. Consequently, judges can determine the scope of issues that are initially addressed at the onset of conference.

The study also provides an added dimension to the study of descriptive representation by examining the more direct impact diversity can have on claimants themselves. In the U.S. Courts of Appeals, Black claimants are over-represented in cases involving Title VII employment discrimination claims. Between 2001 and 2009, for example, Black claimants accounted for 63.96 percent of Title VII claims adjudicated in the intermediary courts. Interestingly, though, the results from this analysis demonstrate that Black claimants are as likely as other claimants, including white, Asian American,

and Middle Eastern claimants to win their appeals case. Still, there is cause for concern since claimants generally lose on appeal. African American judges, therefore, can level the playing field by being more responsive to other Blacks when they go to appeal or defend their case. Not only does the presence of an African American judge increase the probability of a favorable vote, but racially diverse panels can also increases the probability of a favorable outcome, as African American judges are capable of influencing their white panel colleagues. The effect, moreover, is quite substantial, as the racial diversity increase the probability of a favorable panel outcome by 32 percent, more than 14% increase than panels consisting of all white judges. As Welch, Combs, and Gruhl (1998) reason, "this level of responsiveness may ultimately ensure that racial and ethnic minorities do not receive harsher treatment than they deserve" (127). Still, Black claimants may continue to face an uphill battle since African Americans continue to be under-represented in the U.S. Courts of Appeals and the lower federal courts more generally.

In comparison to Black claimants, though, the results suggest that Latinos may not necessarily be at a disadvantage. In the U.S. Courts of Appeals, for example, Latinos represent about 12 percent (489) of claims adjudicated between 2001 and 2009. Different from Black claimants, though, Latino claimants are more likely than non-Latino claimants to win on appeal. Although Latino judges are less likely to rule in favor of other Latinos, these decisions only account for 35 observations during the period of study. This is not to suggest, however, that all Latinos have been treated equally, as some Latinos in this analysis were racially black and therefore included in the African American category. Although there were not enough observations to examine how Afro-

Latinos fare in the appeals courts, research focusing on the relationship between skin color and discriminations suggests that darker-skinned Latinos will be as likely as other Black claimants to win their case.

Based on these results, there is good reason to believe that the courts will continue to be a viable alternative to the other institutions. Over the years, African Americans and Latinos have relied on a "legal strategy" to pursue their policy agenda and compensate for the lack of representation in Congress and state legislative institutions. However, increasing levels of diversity (Rocca and Sanchez, 2011) and significant gains in committee leadership positions (Rocca, Sanchez, and Morin, 2010), has given racial and ethnic minorities more opportunities to be successful at passing legislation, if not more success, in Congress than in previous years. In their analysis of legislative effectiveness, Rocca and Sanchez (2011) report that "bills sponsored by Black MCs were more likely to pass each stage of the legislative process during Democratic Congresses than those sponsored by non-Latino whites" (17). Latinos MCs, on the other hand, where as likely as non-Latino whites to report bills out of the committee, pass legislation in the House, and succeed in turning legislation into law. Similar to the courts, therefore, the findings indicate that minority legislators are not as marginalized in legislative institutions as previous research demonstrates (see Bratton and Haynie, 1999).

Assuming that the lower federal courts continue to become more racially and ethnically diverse, racial and ethnic minorities may wish to continue to rely on the legal strategy to challenge legislation that is salient to racial and ethnic minorities. First, the ever-increasing workload in the lower federal courts provides more opportunities to interpret and refine legislation, such as Title VII legislation. Second, minority members

of Congress tend pass legislation that benefits their concerns of their districts. For example, Rocca and Sanchez (2011) demonstrate that minority MCs are more effective at passing non-minor pieces of legislation, such as land and water rights, operation bills on District of Columbia affairs, and government property management. Still, the success of passing civil rights and other minority pieces of legislation seem to be somewhat limited in comparison. This is not surprising, though, especially since civil rights issues represent polarizing interests that may not find the same kind of support among other members of Congress (Preuhs, 2006; Hawkewsorth, 2004; Bratton and Haine, 1999; 672).

Limitations of Dissertation and Future Areas of Research

This dissertation prompts further investigation into the study of African American and Latino judicial behavior. First, a new direction of research is to examine those factors that explain why Latino and African American judges behave the way they do. Previous research on the subject has a tendency to assume that all minorities, regardless of their race and ethnicity, behave differently than their white colleagues. However, this study finds that African American and Latino judges are not as monolithic in their behavior as originally theorized. Future research needs to address this new puzzle by developing a survey instrument that examines the extent to which discrimination plays a motivating role in Latino and African American judicial behavior. Following previous work on state representatives (Hardy-Fanta, Sierra, Lien, Pinderhughes, and Davis, 2005), an ideal survey would include a battery of questions that capture the life experiences of Latino and African American judges, from early adolescence to their careers in the legal profession. The survey would also include questions that attempt to identify the motivations behind going to law school and pursuing a career in law. Finally, it would

include measures of group consciousness or linked fate to capture judges' perceptions of group solidarity. In all, a survey of Latino and African American judges will contribute significantly to our understanding of judicial behavior, race and ethnicity, and representation.

From a theoretical standpoint, future research should also consider the national origin of both Latino judges and claimants. In the U.S. Courts of Appeals, Latino jurists come from diverse generational and ancestral backgrounds, including Mexico, Puerto Rico, and Spain. The presence of a Latino appellant may, therefore, generate a weaker cue for Latino judges. The term "Latino," is a pan-ethnic term that incorporates individuals who originate from diverse national origins throughout Latin America and the Iberian Peninsula (Garcia and Sanchez, 2008). Based on different historical legacies and immigration experiences, de la Garza et al. (1992) argues that Latinos cannot be expected to share a sense of commonality. This argument is reinforced by studies that find that Latinos are more likely to identify with their national origin than pan-ethnic labels, such as Hispanic or Latinos (de la Garza et al., 1992; Jones Correa and Leal, 1996). Recent work also suggests that Latinos' national origin can play a meaningful role in understanding the relationship between descriptive and symbolic representation. For example, Sanchez and Morin (2011), find that the presence of co-ethnic mayors can heighten perceptions of liked fate among their constituents. Therefore, Latinos from diverse national origins may not necessarily evoke a sense of shared group membership for Latino judges. In all, the ability to control for the both the judges' and appellants' national origin would greatly improve our understanding of Latino judicial behavior

Finally, this study is only generalizable in so far that it speaks to Title VII discrimination cases in the U.S. Courts of Appeals. Therefore, one should be cautious in its generalizability to other policy issues. Still, these findings can provide a platform for future studies across other policy issues. Previous research, for example, has focused on criminal cases, such as those surrounding discrimination and crime (Scherer 2004-2005; Gottschall, 1983). More recent studies have even narrowed their case selection by focusing more exclusively on search and seizure cases and cases dealing more specifically with employment discrimination and affirmative action (Scherer 2004-2005; Farhang and Wawro, 2004; Kastellec, forthcoming). While certainly fruitful for examining the effect that diversity can have on behavior, researchers should move beyond these topics to examine other policy areas, such as immigration policy (but see Williams, n. d). Over the years, the issue of immigration has become increasingly salient for Latinos. In 2006, for example, more than 54 percent of Latinos believed that the debates contributed to an increase in discrimination (Pew Hispanic Center, 2006). Although Latinos generally share positive attitudes towards immigrants, Latinos are more likely to believe that the United States should reduce the number of immigrants entering into the United States (Hood and Morris 1997: Hood III, Morris, and Shirkey 1997; de la Garza et al. 1992; Burns and Gimpel, 2000; but see Leal 2007). A more recent pole conducted by Latino Decisions, however, indicates that Latinos, regardless of their national background, regional location, and socio-economic status, generally support immigration policies that favor immigrant rights, such as the Dream Act, and believe that anti-Latino sentiment will be a strong motivating force for choosing who Latinos will vote for in the upcoming 2012 presidential election.

The inclusion of immigration policy also provides an additional avenue to examine Black-Brown relations at the elite level. While Anglos maintain the most negative views towards the flow of immigrants into the U.S. (Leal, 2007), African Americans are less likely than Latinos to advocate reducing levels of legal immigration (Citrin, Greene and Wong 1997; but see Leal 2007). Overall, these attitudes, at least for African Americans, can be largely attributed to two factors: 1) lack of social contact, which can foster negative attitudes and stereotypes of immigrants and Latinos more generally (Bobo and Massagli, 2001; Bobo et al., 1994; Dyer, Vedlitz, and Worchel, 1989; Mindiola, Neimann, and Rodriguez, 2002; Kaufmann, 2005; Oliver and Wong, 2003) and, 2) perception of competition over a number of finite resources, such as jobs, housing, and other government resources (Alozie and Ramirez, 1999; Johnson and Oliver, 1989; Oliver and Johnson, 1984; Kaufmann, 2003; Mindiola, Niemann, and Rodriguez, 2002; but see McClain and Karnig, 1990; McClain, 1993; McClain and Tauber, 1998, 2001). Consequently, I would expect African American judges to have more negative attitudes towards immigrants and Latino immigrants in particular.

From a policy perspective, the issue of immigration has become just as contentious in the federal courts. The Supreme Court and the lower federal courts, more importantly, have adhered to the "plenary power" doctrine by deferring authority to Congress and Executive agencies in immigration cases. *In Chevron U.S. A., Inc V. Natrual Resources Defense Council, Inc. (1984)*, the Supreme Court requires the lower federal courts to defer "reasonable agency interpretation of ambiguous statutes for which the agency has authority to administer" (Slocum 2008, 370). Accordingly, "the Court's decision to defer its power rests on the assumption that administrative law agencies have

greater expertise and more democratic accountability than courts" (Cox 2007: 1682). In more recent years, however, federal judges have become more skeptical of the immigration courts and their rulings (Cox 2007).[1] For example Judge Posner has argued that "the adjudication of [immigration] cases at the administrative level has fallen below the minimum standards of legal justice" (Cox 2007: 1769). Despite the assumption of expertise and democratic accountability, moroever, Judge Posner has questioned the immigration agencies ability to handle both legal and factual questions, labeling past decisions as "arbitrary, unreasoned, irrational, inconsistent, and uninformed" (Cox 2007, 1680). Consequently, the U.S. Courts of Appeals have taken a larger role in dealing with those issues surrounding immigration policy

In all, this new role has led to some interesting divisions over the interpretation of Supreme Court prcedent. As the topic of immigration has been pushed to the forefront of U.S. politics, U.S. Courts of Appeals has been espcially divided over cases involving the deportation of immigrants. According to CFR 1003.4, for example, "if a non-citizen departs the United States while his appeal of a deportation order is pending, his departure withdraws that appeal" (Ungaro 2009: 467). At the center of the debate is the meaning of "departure," and whether an immigrant left the country voluntary or involuntary. Although the Bureau of Immigration Affairs is charged with determining the legal meaning of the statute, the court has generally been inconsistent in its interpretation, endorsing both positions (Ungaro 2009, 475). Not surprisingly, the lack of consistency has trickled down to the Courts of Appeals. While some courts reason that ambiguity of the law dictates that voluntary and involuntary departures should treated the same, other

contend that involuntary departures should not constitute the withdrawal of their appeals (Ungaro, 2009).

Final Remarks

This dissertation entered into the debate that contests the importance of descriptive representation in the courts. Focusing on the latter of the two merits of descriptive representation, this study concludes that descriptive representation can lead to substantive policy outcomes. However, the results from this dissertation demonstrate only partial support for my hypotheses. Highlighting the role of claimant effects, this dissertation demonstrates that African American and Latino judges are not monolithic in their behavior. While African American judges are more likely rule in favor of Black claimants, Latino judges demonstrate much different behavior, as they are less likely to rule in favor of Latino and non-Latino claimants alike. At the panel level, a similar pattern also emerges, as the presence of an African American and Latino judge can have different substantive effects on panel outcomes. Not only do African American and Latino judges demonstrate influence over their panel colleagues, but they are also more likely write the majority opinion and craft policy.

In the context of the courts, this dissertation calls for further efforts to improve the racial and ethnic composition of the lower federal courts. Although Latino and African American judges leads to different substantive outcomes, this dissertation holds that diversification is a normative good (see Mansbridge, 1999). Although the federal judiciary is the least understood of the three branches of government, the lack of visibility does not negate importance of having diverse institutions that "look like America" (Goldman 1978-1979). First, it can provide a sense of trust. In comparison to whites,

African Americans and Latinos are more skeptical of the notion they receive equal treatment, are less trusting of court authorities, and believe courtroom decisions are influenced by political considerations (Brooks and Jeon-Slaughter, 2001; Rottman, 2000: 6). Second, racial and ethnic minorities can improve these negative perceptions by acting as role models and compensating for historical and continued injustices (Phillips, 1998, p. 228; see also Mansbridge, 1999). These expectations, moreover, are shared among judges themselves, as African American judges believe descriptive representation to be important for building a sense of equal justice and trust towards the judiciary (Smith, 1983). In turn, the presence of a diverse judiciary that "looks like America" is said to contribute to the perception that the judicial branch is a legitimate institution (Walker and Barrow, 1985: 597). Finally, diversification of the courts can lead to greater perceptions of institutional legitimacy (Blank and Scherer, 2010). Given the lack of enforcement powers within the judiciary, perceptions legitimacy is especially crucial for a judiciary that is independent.

Given these normative goods, presidents should continue to improve upon the courts racial and ethnic composition. Since 2008, President Obama has followed in the footsteps of predecessors by appointing 8 African Americans and 4 Latinos to the U.S. Courts of Appeals within his first four years as president. Although these appointments have simply maintained the overall representation of African American and Latinos on the appeals-court bench, there has been some notable appointment with regards to Latino jurists. For example, President Obama appointed, Judge Adalberto Jordan, the first Cuban to the U.S. Courts of Appeals. The president has also contributed to the intermediary courts' growing diversity by appointing the second Latina, Mary Helen Murguia, to the

9th Circuit Courts of Appeals. Finally, President Obama appointed Jimmie Reyena of Tucumcari, NM, who became the first minority to be confirmed in Federal Circuit Court history.

However, the appointment of African American and Latino judges should not only be limited to African American and Latino judges. Although African American and Latinos represent the two largest minority populations, future presidential administrations should also make a concerted effort to appoint Asian American and American Indian judges to the lower federal courts. Currently, the federal courts consist of 1 American Indian judge and 19 Asian American judges, though only 3 Asian Americans sit on the U.S. Courts of Appeals. Of these three appointments, President Obama most recently appointed Jacqueline Hong-Ngoc Nguyen and Denny Chin Denny. Born in Hong Kong and Vietnam, respectively, the two appointments not only reflect an attempt to make the courts look more like American electorate, but they also demonstrate the rich diversity within the Asian American community.

As the lower federal courts become more diverse, researchers will be able to improve upon their ability to address questions surrounding the behavior of racial and ethnic minority groups and the conditional role of claimant effects. For example, do Asian American judges behave differently than their white colleagues and how does their voting behavior compare to African American and Latino jurists? Also, does the presence of co-ethnic cues have a positive effect on the voting behavior of Asian American judges? Do claimant effects also hold across other policy issues, such as immigration? Finally, teasing out the race and ethnicity of claimants, how do judges behave towards claimants with different racial and ethnic characteristics? In all, this dissertation provides

a comprehensive examination of African American and Latino judicial behavior by focusing on individual voting behavior, panel outcomes, and majority opinion writing. Moreover, it provides an important first step towards understanding the role of claimant cues in African American and Latino judicial behavior.

APPENDIX A: Validity Tests for Individual-Level Analysis

Table A.1: List of Latino and African American Judges who participated in a Title VII Employment Discrimination Claim between 2001 and 2009.

Latino Judge			African American Judge		
Name	**Court**	**Appointing President**	**Name**	**Court**	**Appointing President**
Arthur Alarcon	9th	Carter	Algenon L, Marbley	S. D. Ohio	W. Bush
Carlos F Lucero	10th	Clinton	Allyson K. Duncan	4th	W. Bush
Carlos T. Bea	6th	W. Bush	Amalya L. Kearse	2nd	Carter
Cecilia Altonoga	S. D. Florida	W. Bush	Ann Claire Williams	7th	Clinton
Edward C. Prado	5th	W. Bush	Brian Stacy Miller	E. D. Arkansas	W. Bush
Emilio M. Garza	5th	H. W. Bush	Carl E. Stewart	5th	Clinton
Fortunato P. Benavides	5th	Clinton	Damon Jerome Keith	6th	Carter
Jose A. Carbanes	2nd	Clinton	Denise Page Hood	E.D. Michigan	Clinton
Juan R. Torruella	1st	Reagan	Eric Lee Clay	6th	Clinton
Julio M. Fuentes	3rd	Clinton	Harry T. Edwards	D.C.	Carter
Kim Wardlaw	9th	Clinton	Janice Rogers Brown	D.C	W. Bush
Richard A. Paez	9th	Clinton	Jerome Farris		Carter
Rosemary Barkett	11th	Clinton	Jonnie B. Rawlinson	9th	Clinton
Sonia Sotomayor	2nd	Clinton	Judith W. Rogers	D.C.	Clinton
			Lavenski R. Smith	8th	W. Bush
			Michael J. Davis	D. Minnesota	Clinton
			Nathaniel R. Jones	6th	Clinton
			Ransey Guy Cole, Jr.	6th	Clinton
			Roger L. Gregory	4th	W. Bush
			Theodore A. Mckee	3rd	Clinton
			Theodore A. McMillian	8th	Carter
N=14 (5 Republicans; 9 Democrats)			N=21 (6 Republicans; 15 Democrats)		

Table A.2: Logistic Model of Judicial Behavior in the U.S. Court of Appeals (2001-2009)

	Model 5 (Constrained Model)			Model 6 (Full Model)		
Variables	**Coef.**	***SE* Robust**	**Discrete Change (min → max)**	**Coef.**	***SE* Robust**	**Discrete Change (min →max)**
Background Characteristics						
Latino Judge	-1.220***	0.473	-0.1481	-0.950***	0.410	-0.1246
Latino Judge*Latino Claimant	---	---	---	-1.224*	1.075	-0.1439
African American Judge	0.334**	0.195	0.0615	-0.156	0.300	-0.0257
African American Judge*Black Claimant	---	---	---	0.688**	0.348	0.1364
Female Judge	0.305**	0.169	0.0549	0.314**	0.168	0.0566
Born in South	0.039	0.168	0.0067	0.029	0.168	0.0049
Age of Judge	-0.001	0.009	-0.0067	0.000	0.009	-0.0027
Former Prosecutor	-0.090	0.162	-0.0153	-0.113	0.162	-0.0192
Ivy League Education	-0.201†	0.174	-0.0333	-0.212*	0.172	-0.0351
Designate Judge	-0.117	0.290	-0.0195	-0.120	0.293	-0.0199
Attitudes & Strategic Interaction						
Judge Ideology	-0.411***	0.216	-0.0837	-0.456***	0.211	-0.0932
Ideology of Panel Median	0.452	0.290	0.0836	0.474†	0.284	0.0874
Ideology of Circuit Median	-0.628	0.625	-0.0962	-0.636	0.623	-0.0975
Ideology of Supreme Court Median	0.376	1.046	0.0789	0.429	1.043	0.0903
Lower Court Decision (Favorable Vote)	2.156***	0.217	0.4826	2.169***	0.219	0.4851

Table A.2 (cont.): Logistic Model of Judicial Behavior in the U.S. Court of Appeals (2001-2009)

Case Facts						
Amicus Curiae Brief	0.750**	0.265	0.1509	0.807**	0.265	0.164
Discrimination Case	-0.036	0.138	-0.0061	-0.044	0.137	-0.0076
Hostile Work Environment Case	0.373†	0.161	0.0688	0.364†	0.161	0.0669
Latino Claimant	0.604*	0.277	0.1162	0.651*	0.289	0.126
Black Claimant	-0.178	0.172	-0.031	-0.252	0.178	-0.044
Asian Claimant	-0.250	0.375	-0.0401	-0.241	0.372	-0.0387
Middle Eastern Claimant	0.135	0.348	0.0239	0.108	0.340	0.019
American Indian Claimant	-2.912***	0.718	-0.2082	-2.729***	0.757	-0.2046
Circuit Norms						
1st Circuit	-2.078**	0.609	-0.1962	-2.050**	0.607	-0.1947
2nd Circuit	-0.282	0.417	-0.0448	-0.214	0.410	-0.0346
3rd Circuit	-1.091†	0.463	-0.1349	-1.077†	0.452	-0.1336
4th Circuit	-1.162†	0.494	-0.1439	-1.122†	0.492	-0.1404
5th Circuit	-0.507	0.559	-0.0765	-0.475	0.551	-0.0722
6th Circuit	-0.440	0.413	-0.0674	-0.383	0.407	-0.0595
7th Circuit	-1.831**	0.468	-0.2471	-1.769**	0.459	-0.2402
8th Circuit	-0.954†	0.470	-0.1365	-0.917	0.463	-0.132
10th Circuit	-0.171	0.472	-0.0281	-0.129	0.464	-0.0214
11th Circuit	-1.549*	0.592	-0.1728	-1.489*	0.586	-0.1687
D.C. Circuit	-1.251†	0.582	-0.1549	-1.150	0.575	-0.1461
Yearly Controls						

Table A.2 (cont.): Logistic Model of Judicial Behavior in the U.S. Court of Appeals (2001-2009)

2002	0.294	0.405	0.0543	0.287	0.404	0.0529
2003	-0.405	0.323	-0.0642	-0.404	0.322	-0.064
2004	-0.077	0.383	-0.013	-0.086	0.381	-0.0146
2005	-0.155	0.521	-0.0256	-0.138	0.525	-0.0229
2006	-0.227	0.257	-0.037	-0.237	0.254	-0.0384
2007	-1.190**	0.302	-0.1527	-1.201***	0.300	-0.1536
2008	-0.511	0.403	-0.0773	-0.503	0.398	-0.0761
2009	-0.238	0.590	-0.0384	-0.269	0.589	-0.043
Constant	0.095	0.806		0.059	0.797	
N		3,985			3,985	
Log pseudo likelihood		-1919.4224			-1914.0917	
% Correctly Predicted		78.17%			78.09%	

† p < .10, two-tailed; *p < .05, two-tailed; **p < .01, two-tailed; ***p < .001, two-tailed.

Note: The model serves as a validity check on the individual voting behavior of African American and Latino judges by clustering around the panel instead of the individual judge. The dependent variable is a vote in favor of racial and ethnic minorities. **Both models cluster around panel (1,329 clusters).**

Table A.3: Logistic Model of Judicial Behavior in the U.S. Court of Appeals (2001-2009)

	Model 7 (Cluster Around Judge)			Model 8 (Cluster Around Panel)		
Variables	**Coef.**	***SE* Robust**	**Discrete Change (min → max)**	**Coef.**	***SE* Robust**	**Discrete Change (min → max)**
Background Characteristics						
Judge Carlos F. Lucero	-2.542***	0.559	-0.2006	-2.542***	0.559	-0.2006
Latino Judge	-0.723†	0.376	-0.101	-0.723**	0.376	-0.101
African American Judge	0.309	0.193	0.0565	0.309**	0.193	0.0565
Female Judge	0.309†	0.170	0.0554	0.309**	0.170	0.0554
Born in South	0.077	0.168	0.0133	0.077	0.168	0.0133
Age of Judge	0.000	0.009	-0.0027	0.000	0.009	-0.0027
Former Prosecutor	-0.106	0.161	-0.018	-0.106	0.161	-0.018
Ivy League Education	-0.203	0.173	-0.0336	-0.203†	0.173	-0.0336
Designate Judge	-0.096	0.290	-0.0159	-0.096	0.290	-0.0159
Attitudes & Strategic Interaction						
Judge Ideology	-0.492*	0.209	-0.1006	-0.492***	0.209	-0.1006
Ideology of Panel Median	0.501†	0.291	0.0919	0.501	0.291	0.0919
Ideology of Circuit Median	-0.591	0.626	-0.0901	-0.591	0.626	-0.0901
Ideology of Supreme Court Median	0.481	1.045	0.1016	0.481	1.045	0.1016
Lower Court Decision (Favorable Vote)	2.139***	0.217	0.4785	2.139***	0.217	0.4785
Amicus Curiae Brief	0.756**	0.267	0.152	0.756**	0.267	0.152

Table A.3 (cont.): Logistic Model of Judicial Behavior in the U.S. Court of Appeals (2001-2009)

Discrimination Case	-0.044	0.139	-0.0076	-0.044	0.139	-0.0076
Hostile Work Environment Case	0.370*	0.162	0.068	0.370†	0.162	0.068
Latino Claimant	0.595*	0.283	0.1141	0.595*	0.283	0.1141
Black Claimant	-0.188	0.175	-0.0326	-0.188	0.175	-0.0326
Asian Claimant	-0.258	0.371	-0.0412	-0.258	0.371	-0.0412
Middle Eastern Claimant	0.097	0.333	0.0169	0.097	0.333	0.0169
American Indian Claimant	-2.899***	0.714	-0.2071	-2.899***	0.714	-0.2071
Circuit Norms						
1st Circuit	-2.084***	0.601	-0.1956	-2.084**	0.601	-0.1956
2nd Circuit	-0.253	0.405	-0.0403	-0.253	0.405	-0.0403
3rd Circuit	-1.116*	0.454	-0.1364	-1.116†	0.454	-0.1364
4th Circuit	-1.138*	0.487	-0.1414	-1.138†	0.487	-0.1414
5th Circuit	-0.547	0.551	-0.0815	-0.547	0.551	-0.0815
6th Circuit	-0.410	0.403	-0.0631	-0.410	0.403	-0.0631
7th Circuit	-1.787***	0.459	-0.2416	-1.787**	0.459	-0.2416
8th Circuit	-0.924*	0.461	-0.1326	-0.924	0.461	-0.1326
10th Circuit	0.014	0.471	0.0024	0.014	0.471	0.0024
11th Circuit	-1.538**	0.583	-0.1714	-1.538*	0.583	-0.1714
D.C. Circuit	-1.223*	0.578	-0.152	-1.223	0.578	-0.152
Yearly Controls						
2002	0.322	0.406	0.0597	0.322	0.406	0.0597

Table A.3 (cont.): Logistic Model of Judicial Behavior in the U.S. Court of Appeals (2001-2009)

2003	-0.365	0.323	-0.0581	-0.365	0.323	-0.0581
2004	-0.072	0.380	-0.0121	-0.072	0.380	-0.0121
2005	-0.080	0.524	-0.0134	-0.080	0.524	-0.0134
2006	-0.236	0.256	-0.0381	-0.236	0.256	-0.0381
2007	-1.200***	0.302	-0.1531	-1.200**	0.302	-0.1531
2008	-0.532	0.401	-0.0798	-0.532	0.401	-0.0798
2009	-0.286	0.588	-0.0455	-0.286	0.588	-0.0455
Constant	-0.008	0.806		-0.008	0.806	
N		3,985			3,985	
Log pseudo likelihood		-1911.3541			-1911.3541	
% Correctly Predicted		78.42%				

† $p < .10$ two-tailed, *$p < .05$ two-tailed. **$p < .01$ two-tailed, ***$p < .001$ two-tailed.

Note: Model serves as a validity check on the behavior of Latino judges by controlling for Judge Carlos F. Lucero. The dependent variable is a vote in favor of racial and ethnic minorities. Model 7 cluster around judge (304 clusters). Model 8 clusters around the pane (1,329)

APPENDIX B: Logistic Model of Panel Outcomes (Includes Variables that Account for the Partisan Composition of Panels)

Table B.1: Logistic Model of Panel Outcomes in the U.S. Court of Appeals (2001-2009)

	Model 3 (Constrained Model)			Model 4 (Full Model)		
Variables	**Coef.**	**Robust *SE***	**Discrete Change (min → max)**	**Coef.**	**Robust *SE***	**Discrete Change (min → max)**
Social Composition of Panel						
One Latino Judge on a Panel	-1.807***	0.322	-0.1983	-1.346***	0.333	-0.1622
One Latino Judge on a Panel*Latino Claimant	---	---	---	-2.308**	0.839	-0.1912
One Black Judge on a Panel	0.416*	0.191	0.0739	-0.191	0.346	-0.0306
One Black Judge on a Panel*Black Claimant	---	---	---	0.865*	0.388	0.1657
One Female Judge on a Panel	0.246	0.206	0.0423	0.266	0.214	0.0451
Two Female Judges on a Panel	0.844***	0.257	0.1644	0.814**	0.269	0.1561
Average Age of Panel	-0.007	0.015	-0.0385	-0.014	0.016	-0.0782
Partisan Composition of Panel						
One Democrat on a Panel	0.349†	0.191	0.0594	0.465*	0.204	0.0788
Two Democrats on a Panel	0.042	0.245	0.0070	0.035	0.255	0.0058
All Democrats on a Panel	0.591†	0.352	0.1134	0.749†	0.395	0.147
Attitudes & Strategic Interaction						
Circuit Ideological Median	-0.187	0.969	-0.0271	0.327	1.025	0.0451
Supreme Court Ideological Median	0.872	1.199	0.1875	1.298	1.260	0.2855

Table B.1 (cont.): Logistic Model of Panel Outcomes in the U.S. Court of Appeals (2001-2009)

Favorable Lower Court Decision	2.285***	0.314	0.5072	2.385***	0.316	0.5261
Case Facts						
Discrimination Case	-0.011	0.174	-0.0018	-0.038	0.182	-0.0063
Hostile Work Environment Case	0.318	0.244	0.0568	0.331	0.248	0.0586
Amicus Curiae Brief	0.223	0.299	0.0393	0.284	0.317	0.0503
Black Claimant	0.053	0.208	0.0089	-0.155	0.259	-0.0258
Latino Claimant	0.722*	0.292	0.1387	0.985**	0.317	0.1949
Asian Claimant	-0.174	0.432	-0.0277	-0.021	0.445	-0.0035
Middle Eastern Claimant	0.489	0.509	0.0922	0.400	0.507	0.0731
Circuit Norms						
1st Circuit	-2.189*	0.924	-0.1941	-2.279*	0.962	-0.1944
2nd Circuit	-0.356	0.499	-0.054	0.154	0.512	0.0263
3rd Circuit	-1.440*	0.672	-0.155	-1.472*	0.665	-0.154
4th Circuit	-1.767*	0.712	-0.1787	-1.807*	0.732	-0.1782
5th Circuit	-0.582	0.836	-0.0838	-0.680	0.857	-0.0939
6th Circuit	-0.870	0.624	-0.1156	-0.677	0.635	-0.0932
7th Circuit	-2.522***	0.707	-0.3069	-2.502***	0.720	-0.3051
8th Circuit	-1.541*	0.673	-0.1919	-1.480*	0.691	-0.1821
10th Circuit	0.099	0.662	0.0169	0.261	0.675	0.0458
11th Circuit	-2.065**	0.786	-0.1941	-2.087**	0.808	-0.1919
D.C. Circuit	-2.029*	0.872	-0.1995	-2.106*	0.913	-0.1996
Yearly Controls						

Table B.1 (cont.): Logistic Model of Panel Outcomes in the U.S. Court of Appeals (2001-2009)

2002	0.181	0.541	0.0317	0.267	0.572	0.0473
2003	-0.519	0.377	-0.0784	-0.336	0.402	-0.0518
2004	-0.042	0.434	-0.0069	-0.041	0.461	-0.0066
2005	0.135	0.504	0.0232	0.210	0.538	0.0363
2006	-0.475	0.363	-0.071	-0.618†	0.363	-0.0878
2007	-1.322***	0.403	-0.1595	-1.413***	0.424	-0.1632
2008	-0.914†	0.475	-0.1211	-0.988*	0.473	-0.1267
2009	-0.535	0.728	-0.0777	-0.891	0.766	-0.1157
Constant	0.172	1.281		0.339	1.331	
N		1274			1274	
Log Pseudo Likelihood		-614.44487			-577.00744	
Correctly Predicted		78.48%			80.14%	

†$p < .10$, two tailed; *$p < .05$, two-tailed; **$p < .01$, two-tailed; ***$p < .001$, two-tailed.
Note: Models serve as a validity check on panel outcomes by controlling for the partisan composition of the panel. The dependent variable is panel ruling in favor of the claimant. All decisions are clustered around panel per claim (1,329).

Appendix C: Logistic Model of Majority Opinion Writing Model (Clusters Observations Around Panel)

Table C.1: Logistic Model of Majority Opinion Writing in the U.S. Courts of Appeals, 2001-2009

	Model 3 (Constrained)			Model 4 (Fully Specified)		
Variables	**Coef.**	***SE* Robust**	**Discrete Change (min → max)**	**Coef.**	***SE* Robust**	**Discrete Change (min → max)**
Black Judge	0.512*	0.194	0.1208	0.480*	0.220	0.1129
Latino Judge	0.420	0.263	0.0989	0.606†	0.340	0.1446
Female Judge	-0.353*	0.168	-0.0760	-0.150	0.214	-0.0331
Ivy League Education	0.204	0.148	0.0465	0.212	0.152	0.0483
Chief Judge	-0.532*	0.179	-0.1088	0.053	0.310	0.012
Judge Designate	-0.034	0.235	-0.0077	-0.178	0.350	-0.0386
Presiding Judge	0.567**	0.163	0.1298	0.706***	0.181	0.1619
Proximate Ideological Judge	0.528**	0.153	0.1205	0.529**	0.152	0.1205
Circuit Ideological Distance	0.099	0.258	0.0244	0.097	0.259	0.0237
Multiple Issues	-0.007	0.117	-0.0016	0.030	0.125	0.0067
Chief Judge*Multiple Issues	---	---	---	-1.217*	0.389	-0.2110
Designate Judge*Multiple Issues	---	---	---	0.358	0.500	0.0839
Latino Judge*Presiding Judge	---	---	---	-0.489	0.459	-0.0997

Table C.1 (cont.): Logistic Model of Majority Opinion Writing in the U.S. Courts of Appeals, 2001-2009

Black Judge*Presiding Judge	---	---	---	-0.092	0.481	-0.0203
Female Judge*Presiding Judge	---	---	---	-0.587†	0.323	-0.1186
Constant	-1.086***	0.159		-1.157***	0.164	0.1129
N		1420			1420	
Log pseudo likelihood		-895.18409			-889.85468	
Correctly Predicted		65.42%			66.20%	

Note: This model serves as a validity check on majority opinion assignments by clustering around the panel decision. The dependent variable is Majority Opinion Writer. This model excludes the 4th circuit, judges who dissent from the majority opinion, and per curium decisions. It also excludes Asian American judges to ease the interpretation of the results. Observations are clustered around case. There are 487 clusters. †$p < .10$, two-tailed; *$p < .05$, two-tailed; **$p < .01$, two-tailed; *** $p < .001$, two-tailed.

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