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# Understanding the Determinants of U.S. District Court Judges' Decisions on Patriot Act Cases

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UNDERSTANDING THE DETERMINANTS OF U.S. DISTRICT COURT  
JUDGES' DECISIONS ON PATRIOT ACT CASES

By

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in

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**ABSTRACT**

Prior research on federal court judges suggests that their judgments are not made solely on legal principles, but on the basis of political ideology and “strategic anticipation” of the actions of reviewing courts. This study seeks to empirically test the role these factors play in Federal District Court decisions involving the U.S.A. Patriot Act of 2001. The results indicate that both political policy preference and strategic anticipation have an effect on the judicial decisions of U.S. District Court judges. Due to statistical complications, however, it was not possible to determine their relative effects on the outcomes of Patriot Act cases.

**INTRODUCTION**

The USA PATRIOT ACT is one of the most significant pieces of federal legislation of the first decade of the twenty-first century. Since it was enacted in 2001, Federal District Court judges have heard dozens of cases applying the provisions of the Patriot Act. With each interpretation, judges shape the statute’s meaning. Therefore, it is important to understand the factors that influence these judicial decisions.

Over the past 65 years, political scientists have theorized and empirically examined the ways in which federal judges make decisions (Bowie and Zorn 2010). The majority of scholars have come to reject the notion that federal judges mechanically make decisions based strictly on legal rules (Carp and Rowland 1996). Alternatively, a considerable amount of literature suggests judges make decisions based on their ideological preferences (the “attitudinal model”) and, depending on their position within the judicial hierarchy, “strategic anticipation” of the reactions of appellate courts (the “hierarchical model”). No research (to the best of my knowledge) has attempted to apply these models to U.S. District Court judges’ decisions on the Patriot Act.

Using an originally constructed dataset, this study examines the roles of ideology and strategic anticipation in judicial decisions involving the United States Patriot Act. The results indicate that ideology and strategic anticipation each have an effect on the judicial decisions of U.S. District Court judges, however, because of statistical issues, it was not possible to estimate the relative importance of these factors.

## **THE USA PATRIOT ACT**

On October 26<sup>th</sup>, 2001, in response to the September 11<sup>th</sup> terrorist attacks, the United States' 107<sup>th</sup> Congress passed the USA Patriot Act with the purpose of preventing domestic and foreign acts of terrorism. The title is an acronym for *Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism* (EPIC Online). Since its enactment, federal and state law enforcement agencies have employed key provisions of the statute to investigate, arrest, and prosecute individuals for both terror and non-terror related criminal offenses. These provisions are considered integral parts of homeland security.

In 2002, the Congressional Research Service (CRS) sought to highlight several substantive features of the Patriot Act. Their report states,

The Act gives federal officials greater authority to track and intercept communications, both for law enforcement and foreign intelligence gathering purposes. It vests the Secretary of the Treasury with regulatory powers to combat corruption of U.S. financial institutions for foreign money laundering purposes. It seeks to further close our borders to foreign terrorists and to detain and remove those within our borders. It creates new crimes, new penalties, and new procedural efficiencies for use against domestic and international terrorists (Doyle 2003: 1).

The “new procedural efficiencies” include roving wiretaps, court ordered searches of business records, and the authorization to conduct surveillance of certain non-U.S. citizens engaged in foreign terrorism, known as “lone wolves” (U.S. Government Online). A 2009 Congressional hearing described the method of a roving wiretap as a way to use a single wiretap order to track several methods of communication, which may include a landline, cell phone, or computer. Roving wiretap operations have been used in several national security and intelligence investigations (U.S. Government Online 2009).

Another provision allows the Federal Bureau of Investigation to seek court orders through the Foreign Intelligence Service Court (FISA), for purposes of gaining governmental access to “tangible” information regarding foreign intelligence and international terrorism (U.S. Government Online 2009). This provision ensures the secrecy of an operation while obtaining authorization from the FISA court. The “lone wolf” provision permits the surveillance of individuals who have no ties to an agent of foreign power or a terrorist organization (Liu 2011.) The Congressional Commission dubs these single actors as “modern day terrorists” who may subscribe to a terror related dogma, but not to any particular terrorist group. Such people are considered to be central to the threat of modern terrorism.

The Patriot Act has faced opposition from civil liberties organizations and activists, who argue that its provisions encroach on fundamental constitutional rights against unreasonable search and seizure protected by of the Fourth Amendment. Those opposing the constitutionality of the law include the American Civil Liberties Union (ACLU) and the Electronic Privacy Information Center (EPIC). Both organizations have brought class action civil challenges

to federal court in several instances. Despite opposition, a Congressional Subcommittee of the Committee on the Judiciary House of Representatives has continued to extend key sunset provisions that were due to expire in 2005, 2006, 2009, and 2011 (Justice Information Sharing Online 2012).

Congress, however, is not the only branch of government to provide oversight of the Act, for the federal courts have encountered the Patriot Act regularly. When new legislation is introduced, the judiciary has the responsibility to determine its meaning and to apply it on a case-specific basis in an adversarial process. In addition to interpreting legislation such as the Patriot Act, judges must also determine whether provisions of the law curtail substantive rights of individuals and exercise the power of judicial review, which is, "...The power to review government acts for their compatibility with the nation's constitution and strike down those acts that are not compatible" (Epstein 2010: 14).

One of the fundamental goals of social science research on the courts is to explain the outcome of cases through understanding the determinants of the judicial decision. Since its passage in 2001, the Patriot Act has been applied in dozens of cases decided by federal courts, and the goal of this paper is to understand the outcomes in these decisions, specifically decisions reached by the United States District Courts. In order to do so, this paper begins by developing a model of the judicial decision.

## **EXPLAINING JUDICIAL DECISIONS**

The traditional understanding of the judicial decision making process has been referred to by political scientists as the "legal model." This model assumes that judges make decisions

within a legal framework, applying legal rules to facts on a case specific basis (Baum 2008: 10).

These rules, which are established by constitutions, statutes, and prior court decisions, are interpreted by judges applying rules of legal interpretation such as the plain meaning of the text, legislative history, and *stare decisis*. According to the legal model, the best explanation for the outcome of a case is the set of reasons given by the judge(s) who decided it.

While some scholars and judges suggest that these rules can be applied mechanistically to deduce a “correct” result in each case<sup>1</sup>, more sophisticated approaches allow for a greater degree of flexibility and judicial discretion. Tarr (2010), for example, claims that the legal decision involves two phases. The first phase is “discovery”, where a judge initially determines the proper resolution of the case. The second phase, “justification,” is when the judge provides the reasoning for his or her decision through written opinion (Tarr 2010). This process, scholars suggest, contains an unavoidable element of rule creation (Baum 2010). This sophisticated model does not force a judge to reach a conclusion based on the law itself, causing scholars to be skeptical of the validity of the legal model.

Perhaps the strongest reason to reject the legal model is the rate of judicial dissent. Since 1940, approximately 70 percent of all Supreme Court cases have included written dissents (Goff 2005: 483). Thus, Supreme Court justices infrequently unanimously agree or disagree on a case. Moreover, in the U.S. Supreme Court, cases are often decided by a 5-4 vote. Brian Goff claims, “Over the past 60 years, about one in every six cases and sometimes more than one out of every four cases hinged on the ballot of a single justice” (Goff 2005: 483). That is, five

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<sup>1</sup> Justice Scalia is known for his “textualist” approach to deciding cases. He explains, “I take the words as they are promulgated to the people of the United States, and what is the fairly understood meaning of those words” (Scalia 1996 in Epstein 2010: 25).

Supreme Court justices upheld or struck down an appealed decision, while four justices reached a conclusion opposite to the majority.

This high rate of dissent is difficult for the legal model to explain. If the justices are given the same case, set of facts, and rules of law, and if the law determines the outcome of the case, one would expect they would more frequently reach the same conclusion. Instead, justices given the same case, facts, and rules of law frequently reach different outcomes. If one wishes to explain this variation, one must look beyond the law itself.

Political scientists have attempted to explain this variance in Supreme Court decisions by developing the “attitudinal model” of the decision process. The attitudinal model attributes judicial decisions to the justices’ preconceived political or ideological preferences. In short, conservative judges vote conservatively, and liberal judges vote liberally (Baum 2008). Thus, judges’ behavior is not based on principles of law or legal interpretation, but on judges’ personal ideological beliefs and preferences (Rowland and Carp 1996).

Proponents of the attitudinal model typically begin by identifying some judicial outcomes as “liberal” and others as “conservative.” In criminal cases, for example, a judge with a liberal policy perspective would be relatively sympathetic to the defendant and his or her procedural rights (Baum 2010), while a judge holding conservative ideals would place a greater emphasis on the criminal justice system and its capacity to fight crime (Baum 2010). Likewise, in civil liberties cases, “liberal” outcomes favor liberties claimants, where “conservative” outcomes do not support civil liberties claimants (Segal and Cover 1989). According to this framework, decisions upholding the government power over an individual in Patriot Act cases

would be conservative, where decisions that are unfavorable to the government would be liberal.

Because a judge's political ideology cannot be directly observed, researchers have used a judge's political party as a proxy for their political ideology, with judges belonging to the Republican Party being identified as conservative, and judges belonging to the Democratic Party as liberal. This practice has been repeated by a number of social scientists<sup>2</sup>.

Daniel Pinello, for instance, finds that in federal courts, party is a strong factor in judicial decision making. In fact, party explains almost half of the variance in a judge's decision (Pinello 1999). He states, "...conventional wisdom today among students of judicial behavior sees party as a dependable yardstick for ideology: Republican judges are conservatives; Democrats, liberals" (1999: 2). In a recent study, Epstein, Landes and Posner also use judges' parties in order to determine their political ideologies (2013). Similarly, Linda Camp Keith states, "The justices' party identification has demonstrated its strength as a surrogate for policy preferences in numerous Supreme Court and lower court studies" (2008: 142).

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<sup>2</sup> One alternative to party that has been used is the Segal Cover Score, which seeks to support the attitudinal model by measuring the ideological values of Supreme Court justices through independent measures of behavior of the justice prior to being confirmed by the Senate majority (Segal *et al.* 1989). Segal and Cover analyzed content within four different newspapers, two with a liberal perspective and two with a conservative stance. Researchers determined whether the article was liberal, moderate, or conservative. Researchers found a strong correlation among the ideological values of justices reported by newspaper articles and their votes within the Supreme Court on similar issues. According to the Segal Cover Score, judicial policy preference significantly explains justice's voting behavior (Segal *et al.* 1989). However, Segal-Cover scores are not available for District Court judges.

Existing research on the attitudinal model predominately focuses on United States Supreme Court justices and it can be argued that justices' positions within the court of last resort gives them the attitudinal freedom to implement their personal policy preferences to a greater degree than other judges (Segal *et al.* 1993). This freedom begins with the process of case selection. With almost total discretion to grant or deny *certiorari*, justices can hear the cases in which they are most interested. In addition, scholars argue that members of the Supreme Court are more likely to pursue, "...their policy goals because they lack electoral or political accountability, ambition for higher office, and comprise a court of last resort that controls its own jurisdiction" (Segal *et al.* 1993: 234). Impeachment and removal of a justice, while theoretically possible, has never occurred. The Supreme Court is thus subject to little control or oversight by other political actors, allowing justices to implement their policy goals without much opposition (Segal *et al.* 1993).

Several of the features that enhance the applicability of the attitudinal model to the United States Supreme Court do not apply with the same force to other courts. In particular, the lack of ambition for higher office, control over the court's docket and, especially, the lack of a higher reviewing court, are unique to the Supreme Court. Therefore, before specifying any expectations about the behavior of District Court judges, it is appropriate to consider to what degree we should expect the attitudinal model to apply to those courts.

### **FEDERAL DISTRICT COURTS**

Compared to the United States Supreme Court and the Federal Courts of Appeals, Federal District Court judges have been paid limited empirical attention by judicial scholars.

This is surprising, considering that Federal District Courts make up a large portion of the federal judiciary and play an essential role in the federal judicial system. There are a total of 94 Federal District Courts located throughout the country, with one court per judicial district. As of March, 2013, there were 677 District Court judges, as compared with 179 Courts of Appeals judges, and 9 Supreme Court Justices (U.S. Courts Online). Thus, the number of District Court judges is 3.8 times greater than the number of Courts of Appeals judges, and 75.2 times greater than the number of Supreme Court justices (U.S. Courts Online).

District Court judges hear many more cases than their superiors. They decide 6.9 times as many cases as the Courts of Appeal and about 3000 times as many as the Supreme Court every year (Espstein, Landes and Posner 2013: 208). Though appellate courts have an important role in declaring the law and setting precedent, lower courts “play a far more important role in the actual lives of citizens than the Supreme Court” (Caminker in Boyd and Spriggs 2009: 48).

District Courts are not only important to the individual litigants in the cases they hear. They also serve a policy making function (Boyd *et. al.* 2009). Through the cumulative effect of decisions such as sentencing, District Court judges have a large impact on policy. As Lynn Mather notes, “the accumulation of similar individual decisions defines policy just as much as one major decision” (Mather in Boyd *et al.* 2009: 43).

The implementation of law is another primary role of the Federal District Courts. District Court judges have been responsible for making decisions on,

Integration of our schools; the availability of abortions; standards for defining obscenity; the quality of air we breathe and the water we drink; requirements for affirmative action programs; and standards for maintenance of our prisons, public hospitals, and mental institutions (Carp and Rowland 1996).

An example of District Courts implementing law took place after the Supreme Court case, *Brown v. Board of Education* (347 U.S. 483 (1954) as discussed in Boyd *et al.* 2009). In the Supreme Court's decision, the Court designated District Courts to handle problems of desegregation as long as their decisions were non-discriminatory and consistent with the Supreme Court's original opinion (Carp and Rowland 1996).

Finally, Boyd and Spriggs claim that District Courts also provide a form of "filtering duty" for appellate courts, essentially managing a large number of cases and filtering those bound for appellate courts (2009). Prior research shows 20 percent of District Court cases will be reviewed by Courts of Appeals, though less than 1 percent will eventually be reviewed by the Supreme Court (Randozzo 2008).

The process of appointing Federal District Court judges is similar to the process of appointing Justices of the United States Supreme Court. They are nominated by the President, and must be approved by a Senate vote. The Office of Legal Policy, located within the Justice Department, and the Office of the White House Counsel frequently meet in the Judicial Selection Committee to discuss the possible nominations of judicial candidates (Baum 2008). If a candidate is agreed upon, the candidate is to be cleared through the president and undergoes an extensive investigation conducted by the Office of Legal Policy and the FBI (Baum 2008). If

considered appropriate, the president will approve the candidate once again before the vote goes to the Senate (Baum 2008).

Like justices of the United States Supreme Court, once they have been approved by a simple majority Senate vote, District Court judges enjoy lifetime appointments and can be removed only by impeachment. Also like the justices, their salaries cannot be reduced. This ensures a certain degree of judicial independence similar to that of the United States Supreme Court. Thus, with similar safeguards as Supreme Court justices, District Court judges would seem to be free to make decisions based on their political ideological preferences.

Research bears out this expectation. A study by Carp and Rowland measuring the partisanship of Federal District Courts from 1933-1977 showed that district judges appointed by Democratic presidents ruled liberally 48 percent of the time, while judges appointed by Republicans voted liberally only 39 percent of the time (1983). Similarly, Pinello finds party as a reliable indicator of judicial voting in the District Courts. In a meta-analysis, Pinello synthesized the results of 84 studies in order to test this link. Of the 16 studies involving District Courts, 11 found an effect. Two studies found that party has a strong effect on the outcomes of District Court cases, another two cases found a moderate effect, seven studies found a small effect, and five found a negative effect (Pinello 1999: 6). Thus, political party is a reliable predictor of these judges' votes, though the effect is somewhat smaller than that for the Supreme Court.

Despite theoretical and empirical support for the notion that partisan ideology influences the decisions of District Court judges, there are several reasons to believe this influence will be less pronounced than it is for the justices of the Supreme Court. The first of

these reasons has to do with the differences in the appointment process. Though the president is unlikely to select a candidate with a differing political ideology, he may be forced to select a candidate with a more moderate stance due to the tradition of Senatorial Courtesy. This term refers to a practice where,

...a presidential nomination to a federal position within a state requires senate confirmation, the Senate as a whole gives deference to the wishes of the senators from that state—very strong deference to a home state senator of the president's party (Baum 2008: 100).

Research has shown that state senators and local political factors are just as important in the selection process as the, "values and attitudes of the president in whose name the appointment was made" (Carp *et al.* 1996). Traditionally, if senators from a state did not approve of a nomination, it would not be considered by the Judiciary Committee. If home-state senators did support the nomination, the nominee would quickly pass through the Judiciary Committee.

Though the practice of senatorial courtesy has remained an important part of the appointment process, its significance has diminished over time. Due to the partisan divide in Washington, home-state support does not automatically mean senate confirmation. Since 1980, senators have been more likely to oppose the appointment of nominees if they are of the opposing party. This partisan divide has resulted in fewer judicial appointments and caused the average length of the appointment process to increase (Baum 2008). As a result, the president is likely to nominate a person with a moderate stance rather than a heavily partisan stance in order to fill a judicial vacancy.

The second reason ideology may not play as much of a factor as it does for superior courts is that the decisions of the former are subject to appellate review (Bowie *et al.* 2010). As previously noted, justices of the Supreme Court are free to act on their policy preferences in part because their decisions are not subject to review by a higher authority. This is obviously not the case for the District Courts, whose decisions are subject to review by the Federal Courts of Appeals and, ultimately, the United States Supreme Court.

Indeed, the decisions of the district courts are subject to mandatory review by the United States Courts of Appeal. That is, if criminal defendants and civil litigants wish to appeal their guilty or undesired verdict that a trial judge renders, they have the right to do so.

Randozzo claims that,

...as the courts of appeals effectively monitor a substantially higher percentage of trial court cases, and as appellate panels cannot selectively refuse to review an appeal, district court judges must essentially operate under the premise that their decisions are likely to be reviewed (2010: 675).

Given the above, there is reason to think that District Court judges must balance their own ideological preferences against those of their appellate superiors (Randozzo 2010).

Randozzo finds evidence of such a “strategic anticipatory” effect of appellate court ideology on District Court judges’ decisions. That is, District Court judges that anticipate a fear of reversal will “...curtail their ideological proclivities and avoid a negative outcome on appeal” (Randozzo 2010: 685). If, however, District Court judges believe they share a political preference with their Courts of Appeal, they will make decisions based on their political ideology (Randozzo 2010).

Other research supports some of Randozzo's findings. Epstein, Landes, and Posner found that in the Eighth Circuit, a court that is overwhelmingly made up of judges that were appointed by Republican Presidents, the court

reversed decisions by district judges appointed by Democratic Presidents at a significantly higher rate than those by district court judges appointed by Republican Presidents (2013: 113).

Thus, while there is some evidence that District Court judges do in fact rule on their ideological preferences, there is also strong reason to believe that District Court judges' decisions are constrained by a "strategic anticipatory effect."

However, not all trial court decisions are appealed and, in fact, appeals are relatively rare. A defendant or litigant's decision to appeal is ultimately affected by, "strategy, costs, and anticipation" (Boyd and Spriggs 2009: 41). If an appellant's case is not strong or there is an issue of funding, it is not wise for a defendant or litigant to appeal a decision. Carp and Rowland find 20 percent of all District Court cases are appealed per year (1996). In addition, "...the low rates of appeal and reversal ensure that only a very small number of district courts' judgments will be reversed on appeal—about 3 percent" (Carp *et al.* 1996). Thus, even when cases are appealed, the trial court is not likely to be reversed.

To summarize, there are theoretical reasons to believe that ideology (as proxied by political party) of District Court judges affects the outcome of their decisions at trial level. Empirical research supports this, though findings suggest the effects appear to be weaker at the District Court level than at the Supreme Court level. The evidence also supports the idea that the ideological effects of the District Court judges' is bound by their anticipation of reversal,

particularly by a Court of Appeals where the majority of appeals judges possess a political ideology opposite of the trial judge. This anticipatory effect, however, may be softened by the low likelihood of appeal.

With evidence supporting both models, it is unknown whether ideology or strategic anticipatory effect best explains the behavior of District Court judges. It is possible both models could have an effect on judicial behavior. Therefore, this study seeks to answer these unknown queries.

## **HYPOTHESES**

In order to examine the influence the roles that ideology and “strategic anticipation” play in the decisions of Federal District Courts deciding cases involving the Patriot Act, I will test two main hypotheses. First, that Federal District Court judicial decisions on the Patriot Act are correlated with judicial policy preferences of the judges as proxied by the political party of the appointing president. Specifically, I hypothesize that Republican judges will vote in favor of the U.S. government more frequently than will Democratic judges.

The second hypothesis is that the ideological positions of the Circuit Courts to which District Court judges’ cases are appealed will affect their decision making on cases involving the Patriot Act. The role of the District Court judges’ ideology will be affected by the ideology of their Circuit Court. Specifically, District Court judges under a Republican Circuit Court will be more likely to vote in favor of the U.S. government, while District Court judges under a Democratic Circuit Court will be more likely to vote unfavorably towards the U.S. government.

## DATA

The analysis for this paper was based on an original dataset compiled by the author. Using the advanced search option on Lexis Nexis Academic District Court database, the terms, “USA PATRIOT ACT,” “PATRIOT ACT,” and, “UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO PREVENT AND OBSTRUCT TERRORISM,” were searched for the dates between October 26<sup>th</sup>, 2001<sup>3</sup> and January 1<sup>st</sup> 2012. Because the focus of this paper is on the tendency of judges to rule in favor of the government, the U.S. Government or one of its agencies was required to be a participating party. This search yielded 136 cases. From these, cases were selected as part of the working sample if the court directly interpreted, or cited, a specific section of the Patriot Act, and if that interpretation was used by the court as a justification in deciding at least one of the issues in the case (Banks 2010). Cases were excluded from the working sample if the court cited or discussed the Patriot Act but did not apply it. Seventy three of the 136 cases met this criterion.

Twenty two cases were excluded from this analysis because they were decided by federal magistrate judges. Federal Magistrates, “Serve as judicial officers of the U.S. district courts and exercise the jurisdiction delegated to them by law and assigned by the district judges” (Federal Judiciary Center Online). Magistrates may hear any cases delegated to them by District Court judges, except those involving a felony. The issue with Federal Magistrates, however, is that they are not appointed by the president. Magistrates are, “...appointed by majority vote of the active (district) court” (U.S. Courts Online). Since magistrates are not

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<sup>3</sup> October 26<sup>th</sup>, 2001 marks the date Congress enacted the Patriot Act into law. Thus, any Patriot Act cases subsequently followed.

appointed by the President, determining their party affiliations is beyond the scope of this analysis.

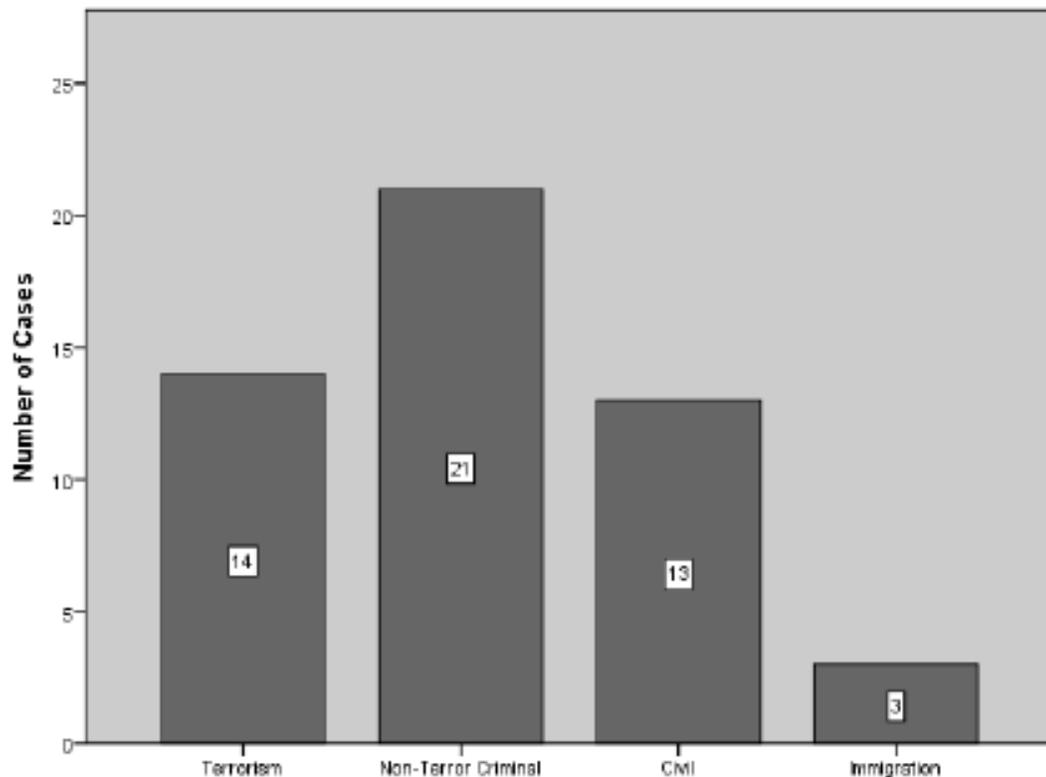
One issue that complicated the data gathering was the non-publication of many District Court decisions. In 1972, the increasing workload on federal judges prompted the Judicial Conference of the United States to develop measures that would cut back on judges' time. Federal judges were given the option to determine which decisions were worth publication, and which ones were not (Dikel and Jan Honigsberg 1988). With an option to separate cases, judges published cases thought to be useful in the future, leaving out those considered repetitive of well known principles of law (Dikel *et al.* 1988). If cases were not of precedential value, their publication was unlikely (Dikel *et al.* 1988). Lexis Nexis Academic provides unpublished U.S. District Court decisions starting from June 21, 2005. The database selectively includes unpublished decisions prior to June 21, 2005 (Lexis Nexis Online). This analysis only includes cases that were included in the Lexis Nexis Academic database.

The cases included in the sample involved several different types of issues, including terror prosecutions, non-terror related criminal prosecutions, civil cases, and immigration cases. A case was coded as a terror prosecution if the court clearly stated the U.S. Government was actively prosecuting a suspected terrorist. Terrorism cases often included defendants who were charged with providing material support to known terrorist organizations, such as the 2007 case, *United States v. Holy Land Foundation* (U.S. Dist. LEXIS 50239). Other terrorist prosecutions addressed suspected terrorists, such as Richard Reid, the infamous "shoe-bomber." Non-terror related Patriot Act cases often included money laundering prosecutions,

such as, *U.S. v. \$293,316 in U.S. Currency* (2004 U.S. Dist. LEXIS 25611). Civil cases usually involved a dispute over a tort or contract breach. One civil case, *Miller v. U.S. Parole Commission* (2003 U.S. Dist. LEXIS 7325), involved a constitutionality dispute over the obtainment of a federal inmate’s DNA sample. Immigration cases generally applied to deportation or visa issues. *Pierre v. McElroy* (2001 U.S. Dist. LEXIS 19982) exemplifies an immigration case concerning a suit over the naturalization process of a non-citizen.

Graph 1 shows that, of the 51 cases, 14 are terrorism prosecutions, 21 are non-terrorism criminal prosecutions, 13 are civil cases, and 3 are immigration cases. It is possible that the outcomes of these different types of cases are subject to different influences, which would be revealed by analyzing them separately. The sample size, however, is too small to permit this and, therefore, this analysis combines all 51 cases.

**Graph 1: Description of Cases**



The dependent variable for the analysis, *Outcome*, is the vote of the District Court judge. It was coded “1” when the district judge voted in favor of the position taken by the United States Government and “0” when the court ruled against the government. Two cases involved split decisions, where one case involved several separate issues on which the court was required to rule. These cases involving multiple issues were split into separate cases in the data set.

Two independent variables were measured. The first independent variable is the ideology of the deciding judge, which was labeled *District Court Party*. For reasons discussed earlier in this paper, this variable is operationalized by identifying the party of the judge’s appointing president, Democrat or Republican. To determine the party of the appointing president, biographies of District Court judges were searched in the Federal Judiciary Center’s online database (FJC Online).

The second independent variable, *Court of Appeals Majority*, measures the ideology of the Courts of Appeals in the Federal Circuit to which the District Court belonged at the time of each Patriot Act case. This was also determined by party identification of the appointing president who appointed the majority of that court. This variable was coded “1” if a majority of the judges on the Court of Appeals were appointed by a Republican, and “0” if a Democratic president appointed a majority of the judges.

Descriptive statistics are presented in Tables 1 and 2. Of the 51 cases included in the analysis, 68.6 percent<sup>4</sup> had an outcome that was favorable to the government. District Courts

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<sup>4</sup> Percentages for outcomes provided were rounded to the nearest tenth.

ruled unfavorably towards the government 31.4 percent of the time. These percentages are consistent with prior findings that the U.S. Government wins a majority of the cases it argues, regardless of the party of the judge. For instance, Kritzer, Songer, and Sheean (2003) concluded that in the Federal Courts of Appeals, the government had a 70 percent overall success rate when participating as appellant or respondent. This may be due to the greater resources that the government can bring to bear, including better lawyers and the ability to pay legal expenses such as fees for extensive discovery processes or expert witnesses (Kritzer *et al.* 2003). Government attorneys and prosecutors often have more experience in court than opposing parties (Kritzer, Songer, and Sheean 2003: 85), which also contributes to the high rate of government success.

Table 1 shows that the cases are almost evenly split among Democratic and Republican District Court judges. Of the 51 cases, Democratic judges presided 26 instances, while Republicans presided 25 times. As shown in Table 2, District Court judges appointed by President Clinton accounted for 49 percent (almost half) of all District Court Judges. District Court judges appointed by George W. Bush followed at 23.5 percent. Those appointed by George H.W. Bush accounted for 13.7 percent, where those appointed by Reagan made up 11.8 percent. Only 2 percent of District Court judges were appointed by President Johnson, while none were appointed by Ford, Nixon, Carter, or Obama.

Finally, descriptive statistics in Table 1 also indicate 58.8 percent of the cases took place in District Courts that were under Republican Courts of Appeal, where 41.2 percent took place in District Courts with Democratic Circuit Courts of Appeals.

**Table 1: Cases Heard in Democratic or Republican District Courts**

|                   | <b>Court of Appeals Majority</b> |
|-------------------|----------------------------------|
| <b>Democrat</b>   | 21<br>(41.2%)                    |
| <b>Republican</b> | 30<br>(58.8%)                    |

**Table 1.1: Cases Heard in Majority Democratic or Majority Republican Courts of Appeals**

|                   | <b>Presidential Party Affiliation of D.C. Judges</b> |
|-------------------|--|
| <b>Democrat</b>   | 26<br>(51%)  |
| <b>Republican</b> | 25<br>(49%)  |

**Table 2: Percentage of District Court Judges  
Appointed by Individual President**

| <b>Appointing President</b> | <b>Percentage</b> |
|-----------------------------|-------------------|
| Clinton                     | 49%               |
| G.W. Bush                   | 23.5%             |
| H.W. Bush                   | 13.7%             |
| Reagan                      | 11.8%             |
| Johnson                     | 2%                |
| Ford                        | 0%                |
| Nixon                       | 0%                |
| Carter                      | 0%                |
| Obama                       | 0%                |

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## ANALYSIS

Cross-Tabulations were used to test the first and second hypotheses. The first hypothesis states Republican judges will vote in favor of the U.S. government more frequently than Democratic judges. Thus, the cross-tabulation tests the relationship between *District Court Party* and *Outcome*. The second hypothesis states District Court judges under a Republican Circuit court will vote in favor of the U.S. government, where District Court judges under a Democratic Circuit Court will vote unfavorably of the U.S. government. The cross-tabulation will be used to examine the relationship between *Court of Appeals Majority* and *Outcome*. A Chi-Square test will be used in order to measure the significance of the relationships. To test the strength of the association between the variables in both hypotheses,

Phi Tests will be implemented. Applying Phi is appropriate to test the effect size, considering the variables are binary and directional for both hypotheses (Arthur 2012). In the case of two dichotomous variables, Phi is equivalent to Pearson's  $r$  (East Carolina University Online).

Results from the first cross-tabulation support the first hypothesis. There is a strong and statistically significant relationship between Federal District Court judges' party and the outcome of the District Court case. The Chi-Square statistic was significant at the level of .02, which is well below the standard confidence level of .05, and indicates a probability of only two percent that the relationship between the two variables could have occurred by chance. The Phi value of .325 indicates a strong relationship.

Results of the cross-tabulation indicate that Federal District Court judges appointed by Republican presidents ruled in favor of the government on cases involving the Patriot Act 84 percent of the time, while Democratic-affiliated judges ruled in favor of the government 53.8 percent of the time. Thus, the odds of Republican District Court judges supporting the government are 4.49 times greater than the odds for Democratic District Court judges.<sup>5</sup> This finding supports the first hypothesis, which states that conservative judges are more likely to rule in favor of the government in cases involving the Patriot Act. One may thus tentatively conclude that ideology, represented in this case by the political party of the deciding judge, indeed has an effect on a Federal District Court judge's decision making on cases involving the Patriot Act. It is worth noting that these findings are in line with those of Pinello, Carp, and Stidham cited above, that ideology influences the votes of District Court judges.

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<sup>5</sup> This odds ratio is calculated by the formula:  $p_1q_2/p_2q_1$ , where  $p_1$  is the probability of a Democratic judge ruling in favor of the government,  $p_2$  is the probability of a Republican judge doing the same  $q = (1-p_1)$  and  $q_2 = (1-p_2)$ .

**Table 3: Cross-Tabulation of District Court Party and Case Outcome**

|                                |                           | District Court Party |                |               |
|--------------------------------|---------------------------|----------------------|----------------|---------------|
|                                |                           | Democrat             | Republican     | Total         |
| Outcome of District Court Case | Unfavorable to Government | 12<br>(46.2 %)       | 4<br>(16.0%)   | 16<br>(31.4%) |
|                                | Favorable to Government   | 14<br>(53.8%)        | 21<br>(84.0%)  | 35<br>(68.6%) |
|                                | Total                     | 26<br>(100.0%)       | 25<br>(100.0%) | 51<br>(100%)  |

$X^2=5.382$  (P=.020)  
Phi: .325

(Column Percentages Presented)

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A brief comment is needed here to avoid possible confusion. Seeing that decisions of Republican judges are strongly in favor of the government position, while Democratic judges are more evenly divided, it may be tempting to conclude that the very conservative Republican District Court judges are biased while the more even-handed Democrats are not. This conclusion is not justified. In fact, we are not able to say whether the Democrats or Republicans are right or wrong when deciding the law in these cases, or that the judges in one party are more biased than the other. The only claim this evidence supports is that there is a substantial and statistically significant difference between the outcomes in cases decided by judges appointed by Democratic presidents and cases decided by judges appointed by Republicans, with Republican judges upholding the government position more frequently.

The second hypothesis to be tested is that Federal District Court judges are more likely to favor the government in Patriot Act cases where the Court of Appeals that would be

expected to review the decision has a majority of judges appointed by a Republican president rather than a Democratic president. The results of the test, displayed in Table 4, show a moderate but statistically significant relationship between the majority political makeup of Federal Courts of Appeals judges and the outcome of the Federal Court case. Specifically, judges in Republican-dominated circuits favor the government position more frequently than circuits with a majority of Democrats on the Court of Appeals. The Chi Square statistic is significant at the .036 level, indicating a 3.6 percent probability the result could have occurred by chance. This is considerably below the threshold of .05. The Phi test of association produced a value of .293, indicating a moderate relationship.

**Table 4: Cross-Tabulation of Court of Appeals Majority and Outcome of District Court Case**

**Court of Appeals Majority**

|                                  | <b>Majority Democrat</b> | <b>Majority Republican</b> | <b>Total</b>  |
|----------------------------------|--------------------------|----------------------------|---------------|
| <b>Unfavorable to Government</b> | 10<br>(47.6%)            | 6<br>(20.0%)               | 16<br>(31.4%) |
| <b>Favorable to Government</b>   | 11<br>(52.4%)            | 24<br>(80%)                | 35<br>(68.6%) |
| <b>Total</b>                     | 21<br>(100%)             | 30<br>(100%)               | 51<br>(100%)  |

$\chi^2=4.377$  (P=.036)  
Phi: .293

(Column Percentages Presented)

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Table 4 shows that District Court judges sitting in Republican-dominated circuits ruled in favor of the government 80 percent of the time, while judges in District Courts where the Federal Courts of Appeals had a majority of Democrat-appointed judges did so 52.4 percent of

the time. Thus, for District Court judges under Republican-dominated Courts of Appeals, the odds of supporting the government are 3.7 times as large as the odds for District Court judges within Democratic dominated Courts of Appeals<sup>6</sup>. These results suggest that the majority makeup of a Court of Appeal has an effect on the outcome of District Court cases involving the Patriot Act and supports the second hypothesis, which predicts District Courts are more likely to rule favorably towards the government if the Court of Appeal holds a majority of Republican appeals judges.

To summarize the results to this point, when the relationships are tested independently, both District Court Party and Court of Appeals Majority appear to have an effect on the Outcome of District Court case, and both relationships are statistically significant. A new question arises from this observation. Though *District Court Party* and *Court of Appeals Majority* separately appear to influence the outcome of a District Court case, the relative contribution each independent variable makes to the outcome of a District Court case is not known. In what follows, I attempt to explore this question.

Answering this question requires the use of multivariate, or multiple regression. Multivariate regression is a statistical technique that uses more than one independent, or, “causal” variable to make predictions (Fullerton, Maltby, and Miller 2009). In fact, multiple regression tests, “...The extent to which each independent variable  $x$  will play a part in predicting what the most likely value of the dependent variable  $y$  will be” (Fullerton *et al.*; 212). Essentially, a multiple regression tests how much the dependent variable  $y$  changes when the independent variables  $x$  move up or down by one unit (Torres-Reyna Online).

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<sup>6</sup> Odds Ratio

A multiple regression equation reads,  $y = a + b_1x_1 + b_2x_2\dots$ etc. The  $y$  represents the dependent variable,  $x_1$  and  $x_2$  represent the independent variables,  $b_1$  and  $b_2$  represent the coefficients, and “ $a$ ” symbolizes the constant, which is, “...The value  $y$  is predicted to have when all independent variables are equal to zero” (Princeton Online). The coefficients, or the “ $b$ ” values, explain the size of increase or decrease when the independent variable increases by one unit, when all other independent variables are held constant (Princeton Online).

One of the assumptions of linear regression is that the dependent variable should be either interval or ratio-level and be unrestricted in its range. In the case of a dichotomous dependent variable, however, this assumption is violated and the use of linear regression is inappropriate. In essence, the regression predicts the probability or odds that the dependent variable will take on a value of 1. The linear model may produce probability estimates that are less than zero or greater than one, which are logically impossible, and the use of linear regression for a dichotomous dependent variable will lead to misleading results.

Instead, this study will employ logistic regression to test the relative contribution each independent variable makes to the outcome of a District Court case. Logistic regression is similar to linear regression, using one or more independent, or “causal” variables to make predictions. The difference, however, lies with the logistic regression’s ability to test relationships where the dependent variable is dichotomous (Fullerton *et al.* 2009). Unlike linear regression, the logistic regression addresses the problem of restricted range by transforming the odds usually produced by a multiple regression into log-odds. Using the log odds allows the analysis to, “...Map probability ranging between 0 and 1 to log odds ranging from negative infinity to positive infinity” (UCLA Online).

Logistic regression is similar to linear regression. The difference lies with the logistic regression's ability to analyze a relationship with a dichotomous dependent variable by turning the probability prediction into a prediction using log odds. Because logistic regression coefficients represent the change in the log odds of the dependent variable produced by a unit change in the independent variable, they are difficult to interpret. Fortunately, the coefficients can also be represented as odds ratios, which are more easily understood.

Results from the logistic regression are presented in Table 5. The coefficients, which are expressed as odds ratios, are 3.4 for District Court Party and 2.5 for Court Appeals Majority, indicating that when the independent variables take on a value of 1 rather than zero, the odds of a conservative outcome increases by 3.4 and 2.5 respectively (Princeton Online). It is worth noting that the coefficients have the right signs, in that the odds ratios are both positive and greater than 1. The odds ratios produced in the regression analysis are also reasonable in magnitude and are relatively similar in size to the odds ratios produced from the results of the first and second cross-tabulation. However, the large standard errors relative to the coefficients means that the coefficients for both District Court Party and Court of Appeals Majority are not significant at conventional levels<sup>7</sup>.

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<sup>7</sup> Stata was used in conducting the logistic regression.

**Table 5: Logistic Regression Results**

Log Likelihood = -27.93

N = 51  
 LR Chi2 (1) = 7.59  
 Prob. > Chi2 = .02  
 Pseudo R2 = .12

| Outcome of District Court Case | Odds Ratio | Std. Err. | P> z | (95% Conf. Interval) |       |
|--------------------------------|------------|-----------|------|----------------------|-------|
| District Court Party           | 3.42       | 2.41      | .080 | .86                  | 13.61 |
| Court of Appeals Maj.          | 2.58       | 1.73      | .158 | .69                  | 9.62  |
| Constant                       | .78        | .38       | .626 | .30                  | 2.03  |

These results are somewhat puzzling. When tested separately, using cross-tabulation analysis (shown in Tables 3 and 4), both independent variables yielded strong and statistically significant relationships with the dependent variable. When tested together, however, the relationship between the two independent variables and the dependent variable is insignificant.

The insignificant results are likely due to some combination of two related factors: a relatively small sample size and co-linearity among the independent variables. Prior research has shown while using multiple regression analysis, there should be 10 cases for every 1 independent variable (Barlett, Higgins, and Kotrlik 2001). If independent variables have less than 10 cases, there is a risk that the results of the regression are too specific to the sample, and therefore, the results are not generalizable (Barlett *et al.* 2001). Although there are 25.5 cases per 1 independent variable in this analysis, adding the problem of co-linearity may

increase the number of cases required for each independent variable to yield significant results. Co-linearity exists between two independent variables when the two predictor variables are more correlated with one another than with the dependent variable (Princeton Online). It becomes difficult for the regression to, "...Interpret the valid unique effect of each variable on a dependent variable" (Fullerton et. al. 2009; 353). In other words, it is, "...Impossible to determine which of the variables accounts for variance in the dependent variable" (Princeton Online). The two independent variables, *District Court Party* and *Court of Appeals Majority*, may simply be too closely related for the logistic regression to produce statistically significant results. In order to test whether the insignificant coefficients in the logistic regression may be due to a close relationship between the independent variables, a cross-tabulation between *District Court Party* and *Court of Appeals Majority* was conducted. As presented in Table 6, the relationship between the two variables is strong, and statistically significant. A Chi-Square report produced a significance level of .015, indicating a 1.5 percent probability the relationship could have occurred by chance. The Phi test of association produced a value of .342, signifying a strong relationship. Judges with Democratic Party Affiliations were under majority Democratic Courts of Appeals 57.7 percent of the time, compared to being under majority Republican Courts of Appeals 42.3 percent of the time. Judges with Republican party affiliations were under Republican dominated Courts of Appeals 76 percent of the time, compared to being under Democratic dominated Courts of Appeals 24 percent of the time. This finding indicates Republican judges are 3.2 times more likely to serve under Republican Courts of Appeals than Democrats.

**Table 6: Cross-Tabulation of Presidential Party Affiliation and Majority Makeup of Courts of Appeals**

**Court of Appeals Majority**

|                             |                   | <b>Majority Democrat</b> | <b>Majority Republican</b> | <b>Total</b> |
|-----------------------------|-------------------|--------------------------|----------------------------|--------------|
| <b>District Court Party</b> | <b>Democratic</b> | 15<br>(57.7%)            | 11<br>(42.3%)              | 26<br>(100%) |
|                             | <b>Republican</b> | 6<br>(24.0%)             | 19<br>(76.0%)              | 25<br>(100%) |
|                             | <b>Total</b>      | 21<br>(41.2%)            | 30<br>(58.8%)              | 51<br>(100%) |

**X<sup>2</sup>=5.973 (P=.015)**  
**Phi: .342**

(Row Percentages Presented)

Thus, *District Court Party* and *Court of Appeals Majority* are closely correlated. This co-linearity would explain the insignificant results produced by the logistic regression. The overlap makes it impossible for the regression analysis to determine whether judicial party affiliation or the majority makeup a Court of Appeals has more of an effect on the outcome of a case.

In order to look deeper into the relationships between the two predictor variables and dependent variable, a cross-tabulation between *Court of Appeals Majority*, and *Outcome of District Court Cases* was conducted with Judge’s Party acting as the control variable. Table 7 shows the relationship between case outcome and Court of Appeals majority for Democratic District Court judges, and Table 8 shows the relationship for Republican Judges. These tables

allow one to see the effect of *Court of Appeals* on *Outcome* separately for Democratic and Republican judges.

The Chi square statistics for both tables are insignificant, likely due to low counts in some cells.

**Table 7: Cross-Tabulation of Courts of Appeals Majority and Outcome for Democratic Judges**

Democratic D.C. Judges

Courts of Appeals Majority

|                           | Majority Democrat | Majority Republican | Total          |
|---------------------------|-------------------|---------------------|----------------|
| Unfavorable to Government | 9<br>(60.0%)      | 3<br>(27.3%)        | 12<br>(46.2%)  |
| Favorable to Government   | 6<br>(40.0%)      | 8<br>(72.7%)        | 14<br>(53.8%)  |
| Total                     | 15<br>(100.0%)    | 11<br>(100.0%)      | 26<br>(100.0%) |

$X^2 = 2.735$  (P=.098)

(Column Percentages Presented)

As shown in Table 7, there are only three cases in the cell of Majority Republican and Unfavorable District Court Outcome. Table 8 shows that there is only one case in the cell of Majority Democrat and Unfavorable to the Government, and only three cases in the cell of Majority Republican and Unfavorable Outcome. These low cell counts are due to a combination of a relatively small sample size and the fact that the observations are unevenly distributed across the cells, especially for Republican judges. This is also the likely explanation for a lack of statistical significance of the coefficients in the logistic regression in Table 5. Prior

research has shown when Chi-Square statistic is employed, the expected value of each cell should be five or more. If the values are too low, the Chi-Square is likely to yield insignificant results (Analysis Factor Online).

**Table 8: Cross-Tabulation of Courts of Appeals Majority and Outcome for Republican Judges**

Republican D.C. Judges

Courts of Appeals Majority

|                           | Majority Democrat | Majority Republican | Total          |
|---------------------------|-------------------|---------------------|----------------|
| Unfavorable to Government | 1<br>(16.7%)      | 3<br>(15.8%)        | 4<br>(16.0%)   |
| Favorable to Government   | 5<br>(83.3%)      | 16<br>(84.2%)       | 21<br>(84.2%)  |
| Total                     | 6<br>(100.0%)     | 19<br>(100.0%)      | 25<br>(100.0%) |

$\chi^2=.003$  (P=.959)

(Column Percentages Presented)

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Although the relationships lack statistical significance, it is interesting to note the patterns in the data. As shown in Table 7, when a District Court Judge is a Democrat, they support the government 40 percent of the time when the Court of Appeals is Democratic, but 73 percent of the time when the Court of Appeals is Republican. Thus, for Democratic District Court Judges, it seems as though the party of the Court of Appeals matters quite a bit in their decision making process.

On the other hand, Republican District Court Judges ruled in favor of the government 83 percent of the time when the Court of Appeals was Democratic, and a nearly identical 84 percent of the time when the Court of Appeals was Republican. Thus, in contrast to the result for Democratic judges, the majority party on the Court of Appeals does not seem to matter for Republicans. The lack of statistical significance between the relationships presented in Tables 7 and 8 make it impossible to draw any solid conclusions. Nonetheless, it is interesting to speculate on the possible reasons for this difference.

As discussed above, it appears that Democratic District Court judges support the government at a considerably higher rate when the Court of Appeals majority is Republican. It would be possible that Democratic judges have a greater fear of being reversed by a majority Court of Appeals of the opposite party than do Republican District Court judges. Democratic District Court judges may also consider the conservative United States Supreme Court. A recent study by Lee Epstein and Andrew Martin suggests the Roberts court has been the most conservative court since the 1930s (NY Times Online). Their fear of reversal from the Supreme Court could be large enough for Democratic judges to curtail their ideological preferences where Republicans do not.

On the other hand, Republican judges support the government at a high rate regardless of the majority of the Court of Appeals. Though it is possible that Republican judges are more ideologically committed than Democrats, one can speculate that Republican judges do not have as great of a fear of reversal as Democratic judges, due to the conservative Supreme Court. If a Republican judge's decision were to be appealed to a majority Democratic Court of Appeals, the

judge knows that the Supreme Court may uphold his/her ideological position. Thus, the strategic anticipatory effect may not be as strong for Republican judges as it is for Democratic judges.

## **CONCLUSION**

The objective of this study was to explore the factors that determine federal District Court judges' decisions on cases involving the USA PATRIOT ACT. I hypothesized that both ideology and strategic anticipation would play a role in the judicial decision making process.

Results indicate a statistically significant relationship between Federal District Court judges' party and the outcome of the District Court case. Specifically, Republican appointed judges' ideologies as measured are more likely to rule in favor of the government in cases involving the Patriot Act. The analysis also uncovered a statistically significant relationship between the majority political makeup of Federal Courts of Appeals judges, and the outcome of the Federal Court case. District Court judges were more likely to rule in favor of the U.S. Government in cases involving the Patriot Act if they were under a conservative Court of Appeals.

Thus, results indicate ideology and strategic anticipation have an effect on the judicial decisions of U.S. District Court judges. This finding is consistent with prior research. Due to statistical issues of co-linearity and sample size, however, the present study cannot determine whether ideology or strategic anticipation has more of an effect on the outcomes of District Court decisions involving the Patriot Act. Determining whether ideology or strategic

anticipation has more of an effect on Patriot Act cases may be possible in the future if more cases are included in the analysis. Until then, however, it is impossible to draw any solid conclusions.

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