Affirmation Rate as a Method of Assessing Judges’ Legal Ability

SUMMARY: This study compares Illinois trial judges’ affirmation rate in 594 cases decided by reviewing courts to the judge’s legal ability score on the Illinois State Bar Association judicial poll. Regression analysis revealed a significant relationship between the trial judges’ affirmation rate and their legal ability.

AUTHORED BY MICHAEL STERN, ILLINOIS STATE UNIVERSITY

The American legal system has error correction mechanisms in place to ensure that correct rulings and decisions are made in the lower courts. If parties feel that an improper ruling or decision was made in the trial court, they have opportunity to appeal the case to the appellate court. The idea is that the appellate court will correct any errors made by the trial judges.

When a case is reviewed by a higher court, the court of review has a multitude of different options, but primarily the decision of the lower court is either affirmed or reversed. If a decision is affirmed on appeal, it is a testament that the lower court made the correct legal decision. This suggests that when assessing a judge’s legal ability it is appropriate to look at judges’ track record on appeal to discern the rate at which their decisions are affirmed.

This approach is not something that is commonly used to assess a judge’s legal ability. Little research has been conducted to examine if a relationship between the two exist. Furthermore, there has not been much research conducted to examine what factors potentially affect whether a trial judge makes the correct calls.

Frank B. Cross and Stefanie Lindquist discuss this assessment in *Judging the Judges[[1]](#footnote-1).* Their theory, simply put, is that the best judges are affirmed most often and the worst judges are more frequently reversed. When they put this theory to the test against other forms of judging the quality of judges, it holds true. While Cross and Lindquist do not state that affirmation rate is the end all be all of a judge’s quality, it is their belief that it is something that needs to be given more weight.

This paper examines judges’ affirmation rate on appeal to discern whether there is a relationship between a judge’s legal ability and their track record in the court of appeals. I focused on the trial judges who currently sit in the Sixth and Eleventh Circuits of Illinois. These circuits are both part of the Fourth District. This means that appeals from decisions rendered in both of these Circuits are reviewed by the Justices sitting in the Fourth Appellate District. This study compares the percentage of each judge’s cases on review that were affirmed to the legal ability scores the judge received on the bar poll conducted by the Illinois State Bar Association (ISBA). It finds there is in fact a significant relationship between whether a judge is affirmed on appeal and the judge’s legal ability bar poll score. As expected, affirmation rate is significantly related to a judge’s legal ability rating.

Information about the judges was obtained from Sullivan’s Judicial Directory[[2]](#footnote-2). The judges from the Sixth and Eleventh Circuit have similar backgrounds, which is not surprising because the most populous counties in these circuits are similar. Both McLean (Eleventh Circuit) and Champaign County (Sixth Circuit) are home to large public universities, Illinois State University and University of Illinois respectively. Both circuits are also encompassed by farming communities. There are eighteen judges serving as Associate Judges and twenty-one judges serving as Circuit Court judges. The average age of the judges is late fifties. Twenty-nine of the judges would fall under the “Baby Boomer”[[3]](#footnote-3) generational label with the rest, ten of the judges, falling under the “Generation X”[[4]](#footnote-4) label. The vast majority of the judges are also male.

These judges mainly went to school in the Midwest. The majority attended public universities, primarily in Illinois. They attended law schools across all four tiers. The tier a law school is placed in is determined by the U.S. News and World Report. The first tier schools are the institutions that U.S. News considers to be the top fifty law schools in the nation. Graduates from tier one law schools represent the majority of judges in these two circuits. Upon passing the bar, a large portion of these judges worked in the public sector. Twelve of the judges previously worked as prosecutors, eight of the judges worked as public defenders with four of them working as both.

What better way to examine the legal ability of these judges then to look at how their rulings have been treated on appeal. This initial thought spawned the following research. I examined 594 published decisions of the appellate cases originally decided by judges sitting in the Sixth and Eleventh Circuits who were recently reviewed by the ISBA poll. I then calculated the affirmation rate by taking the percentage of cases affirmed after 1994[[5]](#footnote-5). A judge’s *affirmation rate* ranges between 0 and 1, with a mean rate of .49. The distribution of judges’ affirmation rates can be seen in Table 1. This was used as the dependent variable of the study.

Table 1: Affirmation Rate Distribution

|  |  |
| --- | --- |
| Affirmation Rate | Frequency |
| 0.00-0.24 | 3 |
| 0.25-0.49 | 11 |
| 0.50-0.74 | 17 |
| 0.75-1.00 | 2 |

When a case is reviewed by a higher court, there are several ways the court can rule. For the purposes of this study, I narrowed it down to whether the case was affirmed or reversed. This meant that if all parts of the lower court judge’s decision were affirmed, then it was considered to be affirmed. If any part of the judge’s decision was not affirmed, meaning one or more parts were amended or reversed in some capacity, the case was considered to be reversed.

Table 2: Breakdown of Cases by Gender and Circuit

|  |  |  |  |
| --- | --- | --- | --- |
|  | Cases Affirmed | Cases Reversed | Total Cases |
| Male Judges | 296 | 218 | 514 |
| Female Judges | 35 | 45 | 80 |
| 9th Circuit Judges | 263 | 197 | 460 |
| 11th Circuit Judges | 68 | 66 | 134 |

Table 2 shows the breakdown of cases reviewed by the gender of the judge and where the judge is seated. There are several significant points that this breakdown shows. The first is the difference between male and female judges being appealed. In total there were 514 cases involving male judges, while only 80 involving female judges. There is a similar situation in regards to the circuit where the judge is seated. There were 460 cases appealed from the Sixth Circuit while only 134 from the Eleventh Circuit. More cases were affirmed than reversed for each of these categories, except for female, who also had the lowest number of cases appealed.

The principal independent variable was the judge’s *legal ability* scores on the ISBA bar polls. Attorneys who have first-hand experience with trial judges fill out the bar poll, which is a series of yes or no questions. ISBA sends confidential ballots to its members in the circuit in which a judge is seated. When all ballots have been returned, the ISBA compiles the responses and tabulates a percentage to reflect the number of yes votes cast. This means that the legal ability score given to a judge by the bar poll is a calculation of the number of attorneys who cast a vote saying that they had or did not have legal ability. If an attorney does not send in a ballot, it is not counted towards this percentage. Potential values range from 0 to 100. For the purpose of this study, the bar poll results from 1994 through 2012 were used. For judge’s whose legal ability was scored multiple times throughout this period, an average was used. The highest legal ability score was 98.84 with lowest score being 76.13.

I also constructed six additional explanatory variables to test the relationship between the principal independent variable and the dependent variable.

If the judge was elected (“*elected*”) is used as an independent variable to differentiate between Circuit and Associate Judges. Circuit Judges are elected by the general public to their position and Associate Judges are appointed by the Circuit Judges. This is a binary variable with 1 indicating that the judge was elected and 0 showing that the judge was appointed. It is anticipated that judges who are appointed would have higher legal ability and therefore be affirmed by the appellate court more often than not. This is because they do not have the pressure of reelection potentially guiding their decisions.

If the judge is considered to be a part of the baby boomer generation (“*baby boomer”*) is used as a surrogate variable for age. The oldest judges used in this study were a part of the baby boomer generation. The more a judge has experienced in life as well as in the courtroom should lead them to make the correct decision. This is a binary variable with 1 indicating that the judge was born during the baby boomer generation and 0 showing that the judge was not. *Male* is an explanatory variable because there may be a bias against female judges. Therefore, it is expected that male judges will have a higher affirmation rate. This is a binary variable with 1 indicating that the judge is male with 0 meaning that the judge is female.

The *public university* variable denotes whether a judge graduated from a public university. Public universities sometimes have the stigma that they may not provide as good of an education as a private school. This variable is set in place to test whether a judge attending a public university has any effect on them making the correct legal decisions. *Tier 1 law school* denotes whether the judge graduated from a law school ranked by US News and World Report as a top fifty law school in its 2013 rankings. It would be expected that alumni from one of these schools is more likely to make the correct legal decision and not be reversed by the appellate court.

The final explanatory independent variable used in this test was whether or not the judge was from the Sixth Circuit (“*Sixth Circuit*”). This variable was used to see if there was a difference between judges of the Sixth Circuit and judges of the Eleventh Circuit. This variable is coded with either a 1 or a 0, with a 1 meaning they are from the Sixth Circuit and 0 meaning they are from the Eleventh Circuit.

Table 3: Results of Linear Regression Model

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Coefficientsa** | | | | | | |
| Model | | Unstandardized Coefficients | | Standardized Coefficients | t | Sig. |
| B | Std. Error | Beta |
| 1 | (Constant) | -1.093 | .688 |  | -1.589 | .125 |
| Legal Ability | .015 | .007 | .357 | 2.126 | .044 |
| Elected | .052 | .085 | .110 | .615 | .544 |
| Baby Boomer | -.085 | .113 | -.149 | -.749 | .461 |
| Public Undergrad School | -.024 | .089 | -.048 | -.271 | .789 |
| Tier 1 Law School | -.086 | .090 | -.185 | -.959 | .347 |
| Male | .261 | .103 | .433 | 2.540 | .018 |
| Sixth Circuit | .145 | .083 | .308 | 1.735 | .095 |
| a. Dependent Variable: Affirmation Rate | | | | | | |

The results of the linear regression model are displayed in Table 3. According to this analysis affirmation rate is significantly related legal ability. As expected, trial judges who receive higher *legal ability* scores have a higher *affirmation rate* at a significant level (p=.044).

The model also demonstrated a significant relationship between *affirmation rate* andwhether the judge was a *male*. Male judges were affirmed more often than female judges. *Baby boomer* and *tier 1 law school* are negatively associated with *affirmation rate* but not a significant level. If the judge was *elected,* which circuit the judge is seated in (*Sixth Circuit*) and going to a *public university* were positively associated with *affirmation rate* but not at a significant level.

When examining the significant relationship that this model showed between *affirmation rate* and whether the judge was a *male*, it becomes apparent that this is not a testament to any stereotype. As shown in Table 2, there is an enormous gap between decisions of male judges appealed and the decisions of female judges appealed. There are thirty-two male judges and only six female judges seated in the Sixth and Eleventh Circuits. This means that the two circuits are comprised of 82.05% male judges. It is my belief that the significance shown by this analysis is simply because there is not a comparable amount of cases for both female and male judges. If someone were to look into this further, the next step would be to analyze the appellate panels that decided these cases. If there were no female judges on the panels that decided the cases of female judges, this would show that there may potential be a bias.

There are several limitations to this study. First, not all cases are appealed. If a judge does not commit an error, the odds of an appeal are reduced. So, a judge who consistently makes correct decisions may have a lower affirmation rate. Second, economics may inhibit litigants from filing an appeal even though they have a meritorious claim. In other words, the party who lost in the trial court may not be able to pay for the legal services required for an appeal. This could have the effect of altering the affirmation rate by either lowering or raising it. A final factor that may result in less cases being appealed is double jeopardy. If a judge wrongly finds a criminal defendant not guilty, the prosecution would not be able to appeal this case. This would have the effect of raising the affirmation rate.

A second limitation is that many appellate decisions are unpublished. Illinois Supreme Court rule 23 encourages appellate court to decide cases through unpublished orders rather than by published opinions. These are cases where it is clear that the trial court ruled correctly. These unpublished orders would have a tendency to increase a judge’s affirmation rate.

A final limitation of the study is that the bar poll does not allow for respondents to give a degree of legal ability. The bar poll asks for only a yes or no answer as to whether the judge has legal ability. If they could be scored more appropriately, such as a 1-10 scale, it would be a more accurate testament to the judge’s legal ability. This would alter the study slightly and result in a greater degree of difference between the judges legal ability score. Then in turn, it would be a better predictor of the judge’s affirmation rate.

Regardless of these limitations, the conclusion that judges’ with a strong legal ability are affirmed by the appellate court more frequently is supported by this model. While it is not as significant as one would hope, it still shows the positive correlation. This means that looking into a judge’s affirmation rate is a way to assess the legal ability of that judge.

1. Frank B. Cross and Stefanie Lindquist, *Judging the Judges*, 58 Duke Law Journal 1383, 1384-1436 (2009). [↑](#footnote-ref-1)
2. (2012). *Sullivan’s judicial profiles 2012-2013*. Chicago, Illinois: Law Bulletin Publishing Company. [↑](#footnote-ref-2)
3. Those born between 1946 and 1964 are classified as “Baby Boomers” [↑](#footnote-ref-3)
4. Those born between 1965 and 1984 are considered to be a part of “Generation X” [↑](#footnote-ref-4)
5. 1994 is the first bar poll used in this study [↑](#footnote-ref-5)