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Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-1981

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The overwhelming concensus of Fourth Amendment scholars is that the Supreme Court's search and seizure cases are a mess. This article proposes that the confusion arises from the manner in which the cases were studied, not from the decisions themselves. A legal model with variables that measure the prior justification of the search, the nature of the intrusion, and a few mitigating circumstances is used to explain the Court's decisions on the reasonableness of a given search or seizure. The parameters are estimated through probit.

The results show that the search and seizure cases are much more ordered than had commonly been believed. Virtually all of the estimates are as expected. Additionally, the Court is shown to act more favorably toward the federal government than toward the states. Preliminary analysis suggests that the model has predictive as well as explanatory value.

Protections against unreasonable searches and seizures were deemed important enough by the nation's founding fathers to be included as the Fourth Amendment to our Constitution. The desire for such protection runs deep in both English and American democratic history. Few are not aware of William Pitt's assertion that:

> The poorest man in his cottage may bid defiance to all the force of the Crown. It may be frail—its roof may shake—the wind may blow through it —the storm may enter—but the King of England cannot enter; all his force dares not cross the threshold of the ruined tenement. (Landynski, 1966, p. 23)

Less well remembered is John Adams's recollection of the stirring speech of James Otis, Jr. against the writ of assistance, the colonial version of England's general warrant. The speech, Adams wrote, was the first in "the Chain of Causes and Effects" leading to independence (Landynski, 1966, p. 37). Today, the Fourth Amendment is "one of the laws most vital to our liberty" (Amsterdam, 1974, p. 377). It occupies a "place second to none in the Bill of Rights."[1]

Nevertheless, we are still not sure what makes a particular action by the government an unreasonable search or seizure within the meaning of the Fourth Amendment. According to Justice Frankfurter, "the course of true law pertaining to searches and seizures . . . has not run smooth."[2] Justice White, joined by Justice Burger, claims that the Court has ceased even "to strive for clarity and consistency of analysis."[3] Scholarly opinion agrees. LaFave has observed that "no area of law has more bedeviled the judiciary" (Amsterdam, p. 349). Dworkin (1973) simply states that the Fourth Amendment cases are "a mess" (p. 329). Amsterdam (1974) considers all of these comments to be "understatements" (p. 349).

The question of whether a given search or seizure violates the Fourth Amendment becomes even more important when one considers what happens to unconstitutionally obtained evidence. According to the Supreme Court, it may not be presented as evidence at a trial. This exclusionary rule means that, in the immortal words of Cardozo, "the criminal is to go free because the constable has blundered."[4]

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[1] *Harris* v. *United States,* 331 U.S. 145 (1947) (Frankfurter, J., dissenting).

[2] *Chapman* v. *United States,* 365 U.S. 610 (1961) (Frankfurter, J., concurring).

[3] *Coolidge* v. *New Hampshire,* 403 U.S. 443 (1971).

[4] *People* v. *Defore,* 242 N.Y. 13 (1926).

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This article attempts to show that beneath the so-called mess of search and seizure decisions lies a coherent set of decisions. The Supreme Court has been more consistent in its decisions than either the Court or scholarly opinion would have us believe. These decisions can be successfully explained and predicted through the multivariate analysis of a legal model of the Court's decision making. The data are the 123 cases from 1962 until 1981 in which the Court decided the reasonableness of a search or seizure. The facts of each case, such as whether or not there was a warrant or probable cause, are the independent variables. The decision of the Court on the reasonableness of the search or seizure is the dependent variable. Probit is used to estimate the parameters.

A Legal Model of Supreme Court Decision Making

As Gibson (1978a) has shown, in order to understand judicial decision making, one must understand not only the attitudes of judges, but their role perceptions as well. Tate (1981) has identified background characteristics that directly affect roles and attitudes, and thus indirectly affect votes. All of this is very useful in trying to explain variance among judges or among courts, but when one tries to explain variance among decisions of a given judge or a given court, the roles and attitudes are stable; it is the facts of the cases that vary. Studies that try to explain variance in particular decisions are usually limited to sentencing studies (most recently, Croyle, 1983), where the dependent variable can be measured intervally.

Specification of the sentencing models almost universally is done within the context of legal or extralegal characteristics of the case (see Hagan, 1974). The legal model assumes decisions are based upon "standards set in constitution, statute, precedent or court rule" (Cook, 1977, p. 571). The most frequently used variables in these cases are severity of the crime and prior record. Extralegal models of sentencing deal with characteristics of the defendant that are legally irrelevant to the sentencing decision. More often than not, the key variable of interest is race. Hagan's exhaustive review concludes that "knowledge of extra-legal offender characteristics contributes little to our ability to predict judicial dispositions" (1974, p. 359). Nevertheless Gibson (1978b) has demonstrated that this may be true because these studies aggregate decisions by court rather than by judge. His own research gives evidence that although blacks in Fulton County receive higher sentences than whites, some judges sentence blacks more severely, whereas others sentence whites more severely.

Although findings suggest that lower court judges may not strictly follow statutory guidelines in sentencing, Supreme Court justices are probably even less constrained to follow the legal model. As Rohde and Spaeth (1976) point out, Supreme Court justices usually do not aspire to higher office, are not electorally accountable, and as an institution, are the court of last resort. Thus, they are relatively free to follow their personal policy preferences (1976, pp. 70-74). As Felix Frankfurter explained to President Roosevelt, "People have been taught to believe that when the Supreme Court speaks it is not they who speak but the Constitution, whereas, of course, in so many vital cases it is *they* who speak and *not* the Constitution" (Freedman, 1967, p. 383).

Thus it would certainly increase our knowledge of the Supreme Court if it could be demonstrated that a legal model based on "standards set in Constitution, statute, precedent or Court rule" (Cook, 1977, p. 571), could convincingly explain and predict Court decisions. Of course such a model is not necessarily inconsistent with policy preferences. Nevertheless, if these policy preferences parallel a legal decision structure, we may have some protection against judicial capriciousness (see, for example, Bickel, 1963).

Previous attempts to use fact models to explain and predict particular Supreme Court decisions have not been very successful. The best known of these is Kort's (1957) right-to-counsel study. Ad hoc estimation procedures, the use of more variables than cases, and the absence of any explicit theoretical justification for expecting the Court to behave as it had, were among the problems that plagued this pioneering effort (Fisher, 1958). Schubert (1959) attempted a reasonably precise replication of Kort's methodology and thus faced many of the same problems. Improvement was to come. Ulmer (1964) used an ad hoc formula but did manage to keep the number of variables less than the number of cases. Kort (1963) did the same by using factor analysis and then estimating the coefficients in his model through least squares regression. Ulmer (1969) used discriminant analysis to distinguish Frankfurter's civil liberties decisions by subject area, but his study was somewhat limited in that it could not tell us how Frankfurter would vote within double jeopardy, or search and seizure. Kort (1973) later demonstrated that discriminant analysis, which takes into account the dichotomous nature of the Supreme Court's decisions, is more appropriate than linear regression techniques.

Search and Seizure

In order to specify a decision-making model, I review briefly the Court's major search and

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seizure findings. The most basic requirements for a search to be reasonable are a warrant and probable cause. Probable cause is generally required whether there is[5] or is not a warrant.[6] Warrants require a finding of probable cause,[7] by a neutral and detached magistrate,[8] supported by oath or affirmation,[9] and particularly describing the place to be searched[10] and the things to be seized.[11]

For a search to be unreasonable, it generally must occur at a place where the accused has an "expectation of privacy."[12] The greatest expectation of privacy is in one's home. "At the very core (of the Fourth Amendment) stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."[13] Commercial premises are likewise given great protection. "The businessman, like the occupant of a residence, has a constitutional right to go about his business from unreasonable official entries."[14] Yet as Lafave (1978) notes, "commercial premises are not as private as residential premises" (vol. 1, p. 338). Still receiving protection, but in lesser amounts, are one's person[15] and one's car,[16] but these are nonetheless great compared to the protection one receives when the search takes place in an area in which he has no property interest,[17] such as the home of a third person. Further, the less intrusive an actual search is, the less the justification that is needed. For example, other things being equal, a frisk is more reasonable than a full search,[18] as is detentive questioning.[19]

Finally, because most searches that are brought before the court are in fact warrantless, we must consider exceptions to the warrant and probable-cause requirements. The first of these is the right to search incident to a lawful arrest. From 1950 through 1969, this included the right to search the person of the arrestee and the entire premises where the arrest occurred. This was limited in 1969 to include only the person and the area within his immediate control.[20] When a search occurs after, but not incident to, a lawful arrest, the Court has been split on the need for a warwant.[21] The end result has been that such searches are more reasonable than searches without a lawful arrest. An unlawful arrest cannot add to the reasonableness of a search, but it does not necessarily make the search any more unreasonable[22] unless it was dependent on that arrest.

A second mitigating factor concerns permission by those who have a property interest in the place to be searched, including the suspect,[23] a cohabitant,[24] and any participant to a wiretapped conversation.[25] Other mitigating circumstances include searches after hot pursuit,[26] searches at fixed or functional borders,[27] searches statutorily allowed pursuant to Congress's authority to regulate business,[28] and searches for evidence to be used solely in administrative[29] or grand jury hearings.[30] Seizures of objects in plain view are generally permitted.[31]

Thus the Court considers three categories of this information when deciding the reasonableness of a search. The first category involves the prior justification for the search, including the probable-cause and warrant requirements. Another category is the nature of the search itself: where the search took place, and the extent of the intrusion (i.e., a full search v. a stop-and-frisk or other limited intrusion). The Court also considers the exceptions to the probable-cause and warrant requirements. The more prior justification and the more exceptions associated with a search, the more reasonable it is. The more intrusive a search is, the less reasonable it is. Although cases often have idiosyncratic factors that affect the Court's decision, and the above factors do not determine the Court's resolution of any case, they should strongly predispose the Court toward finding the search reasonable or unreasonable.

Specification

The model will be specified using the above information about the reasonableness of the search, with one limit and one addition. The limit is that the value of all variables used must be known before the Court's decision is released. For exam-

[5] *United States* v. *Harris,* 403 U.S. 573 (1971).
[6] *Chambers* v. *Maroney,* 399 U.S. 42 (1970).
[7] *Aquilar* v. *Texas,* 378 U.S. 108 (1964).
[8] *Coolidge* v. *New Hampshire,* 403 U.S. 443 (1971).
[9] *Whiteley* v. *Warden,* 401 U.S. 560 (1971).
[10] *United States* v. *Ventrusca,* 380 U.S. 102 (1965).
[11] *Marron* v. *United States,* 275 U.S. 192 (1927).
[12] *Katz* v. *United States,* 389 U.S. 347 (1967).
[13] *Silverman* v. *United States,* 365 U.S. 505 (1961).
[14] See v. *City of Seattle,* 387 U.S. 54 (1967).
[15] *Davis* v. *Mississippi,* 394 U.S. 721 (1969).
[16] *Carroll* v. *United States,* 414 U.S. 132 (1925).
[17] *United States* v. *Calandra,* 414 U.S. 338 (1974).
[18] *Terry* v. *Ohio,* 392 U.S. 1 (1968).
[19] *United States* v. *Mendenhall,* 64 L.Ed. 497 (1980).
[20] *Chimel* v. *California,* 395 U.S. 752 (1969).
[21] *Chambers* v. *Maroney,* 399 U.S. 752 (1970).
[22] *Davis* v. *Mississippi,* 394 U.S. 721 (1969).
[23] *Schneckloth* v. *Bustamonte,* 412 U.S. 218 (1973).
[24] *Frazier* v. *Cupp,* 394 U.S. 731 (1969).
[25] On *Lee* v. *United States,* 343 U.S. 747 (1952).
[26] *Warden* v. *Hayden,* 387 U.S. 294 (1967).
[27] *United States* v. *Ramsey,* 431 U.S. 606 (1977).
[28] *Collonade Catering* v. *United States,* 397 U.S. 72 (1970).
[29] *Wyman* v. *James,* 400 U.S. 309 (1971).
[30] *United States* v. *Calandra,* 414 U.S. 338 (1974).
[31] *Coolidge* v. *New Hampshire,* 493 U.S. 443 (1971).

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ple, the Supreme Court's decision on whether there was probable cause or whether an arrest was lawful cannot be used because, first, we do not know whether or not the Supreme Court's decision on probable cause precedes its decision on the reasonableness of the search. Thus we do not know whether the Court's decision on probable cause contributes to its decision on the reasonableness of the search or merely justifies that decision. Even if this were not a problem, the Supreme Court's decision on probable cause obviously cannot be used for prediction because its value is not known until the day the Court renders its decision. For probable cause and the lawfulness of an arrest, the lower court decisions are used as indicators. Further, while coding the lower court's subjective facts, each of its objective facts were compared to the Supreme Court's statement of facts. For the rare difference in interpretation of the facts as set out by the trial court, the lower court's interpretation was used, in order not to bias the results. Thus, all facts are as they are stated in the lower court decision.

Additionally, rather than assume, as Kort (1957) and others have, that changes in membership do not affect the Court's decisions, the model explicitly takes these changes into account. As the Court's membership changed with the Nixon and Ford appointees, one would quite reasonably expect the search and seizure decisions of the Court to have become more conservative even after controlling for the facts of the case (for example, see Wasby, 1976).

Dependent Variable

Reasonableness of the Search

The decision of the Court in a search or seizure case is coded 1 if the Court either found a search to be reasonable or allowed questionably obtained evidence to be used; if not, it is coded 0. Thus, the smaller or more negative the estimate for an independent variable, the more that variable leads to the finding of an unreasonable search. The larger the estimate for an independent variable, the more that variable leads to the finding of a reasonable search.

Independent Variables

Nature of the Intrusion

Home. When the search or seizure took place at the home of the defendant, the value is 1; otherwise it is 0. The estimate is predicted to be negative.

Business. When the search or seizure took place at the business of the defendant, the value is 1; otherwise it is 0. The estimate is predicted to be negative, but less negative than home.

Car. When the search took place in the car of the defendant, the value is 1; otherwise it is 0. The estimate is predicted to be negative, but less negative than business.

Person. When the search or seizure took place on the person of the defendant in public, the value is 1; otherwise it is 0. The estimate is predicted to be negative, but less negative than business.

When all of these variables are 0, the search occurred where the defendant had no property interest.[32]

Extent of the Intrusion

Search. A full search or seizure is 1; limited intrusions such as a stop and frisk or detentive questioning are 0. The estimate is predicted to be negative.

Prior Justification

Warrant. When a search or arrest took place after a warrant had been obtained, the value is 1; otherwise it is 0. The estimate is predicted to be positive.[33]

Probable Cause. The proportion of lower court judges finding probable cause. The estimate is predicted to be positive.

Arrest

Incident Lawful is the proportion of lower court judges finding that the search took place incident to a lawful arrest. The estimate is predicted to be positive.

After Lawful. The proportion of lower court judges finding that the search took place after but not incident to a lawful arrest. The estimate is predicted to be positive, but less than incident lawful.

Unlawful is the proportion of lower court judges finding that the search took place incident to or after an unlawful arrest. The estimate is predicted to be substantively and statistically insig-

[32]Although it is true that within each of these categories further categorization can take place, one is nevertheless faced with the task of constructing a model that is reasonably parsimonious. Some variance must be left to the error term. It is felt that no serious distortions have taken place.

[33]A *valid* warrant will almost certainly make a search reasonable, regardless of other factors. However, since we cannot know in advance whether a warrant is valid, only some warrants (and we don't know which) will make a search valid. Thus the existence of a warrant makes a search more likely to be reasonable.

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nificant. When all of the Arrest variables are 0, the search took place without a prior arrest.

Exceptions. Because the probability of any of the following exceptions is quite small and there is no reason to believe that any one exception is more significant than another, an exceptions variable was created that takes on the value of the number of the following questions that can be answered positively; it can range from 0 to 6, but in fact ranged from 0 to 3.

Was the search or seizure after hot pursuit?
Was the search or seizure at a fixed or functional border?
Was the search statutorily allowed pursuant to Congress's authority to regulate business?
Was the evidence seized used solely for administrative or grand jury hearings?
Was the seized evidence in plain view?
Was permission for the search granted by either the defendant or a cohabitant?

The estimate is predicted to be positive.

Change takes on the value 0 during the Warren Court, 1 after Burger was appointed, 2 after Blackmun was appointed, 4 after Rehnquist and Powell were jointly appointed, and 5 after Stevens was appointed. The estimate is expected to be positive.[34]

Results

Because least squares regression is inappropriate when the dependent variable can only be measured dichotomously (Pindyk & Rubinfeld, 1976), the parameters were estimated for the variables specified above by probit, a maximum-likelihood estimation (MLE) technique. The MLEs represent the change in the cumulative normal probability function, which itself has a mean of 0 and a standard deviation of 1, that results from a one-unit change in the independent variable. The MLEs divided by the standard errors have a Z distribution and are thus amenable to classical hypothesis testing. (For those seeking further information, Aldrich and Cnudde (1975) provide an excellent summary.) The results are presented in Table 1.

[34]The operationalization of this variable is the result of the observed pattern of appointments to the Court. Had Carter received any appointments, a difference measure would have to have been used.

Table 1. Probit Estimates for Search and Seizure Decisions

Variable	MLE	S.E.	MLE/S.E.
Home	−2.31	.61	−3.78***
Business	−2.19	.64	−3.41***
Car	−2.02	.63	−3.21***
Person	−1.28	.54	−2.37**
Search	− .77	.44	−1.76*
Warrant	.95	.45	2.14*
Probable cause	− .32	.38	− .84
Incident lawful arrest	2.30	.81	2.84**
After lawful arrest	1.22	.50	2.47**
After unlawful arrest	− .57	.63	− .91
Exceptions	1.36	.35	3.91***
Change	.16	.07	2.26*
Constant	1.34		
Est R^2	.57		
$-2 \times$ LLR (X^2_{12})	56.68**		
Mean of dependent variable	.55		
% categorized correctly	76		
$n = 123$			

*Significant at .05.
**Significant at .01.
***Significant at .001.

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As can be seen, the model does a good job of explaining the Court's decisions. Looking at the summary measures, we note that the overall significance of the model, as determined by $-2 \times LLR$, is significant at less than .01. The results clearly cannot be explained by chance alone. The estimated R^2 of .57 shows that the model fits rather well.

The mean of the dependent variable is .54; that is, the Supreme Court voted conservatively in 54% of its search and seizure cases. With no further information, one could predict the Court's decisions 54% of the time. By adding the independent variables, predictive accuracy has increased to 76%, a 48% reduction in error.

The parameter estimates are, with the exception of probable cause, as expected, including expectations about magnitude as well as direction. First we examine the variables that determine the nature of the intrusion, starting with where the search took place. It is quite clear that it is important to have a property interest in the area that was searched; overall, the court overturned only two of 12 searches in which the defendant did not have a property interest. The large estimates for the remaining place variables point this out. In comparisons among places in which the defendant has a property interest we see, as expected, that one's home gets the most protection. A search of one's home compared with a search where one does not have a property interests, results in the subtraction of 2.31 S.D. from the cumulative normal probability function when determining whether the search is reasonable. A search that had a probability of being upheld of .85 if it took place at the home of another (a fair guess for such a search) would have a probability of .10 of being upheld if the same search had taken place at the defendant's home.

Almost as high is the protection afforded when the search takes place at one's business. Compared to the same baseline (no property interest), 2.19 would be subtracted from the cumulative normal if an otherwise similar search took place at one's place of business. Also quite high, but again slightly lower, is the protection one gets in one's car. The search of one's car leads to a decrease of 2.02 S.D. from the cumulative normal. A search of one's person receives markedly less protection; 1.28 would be subtracted from the cumulative normal. A search that had a probability of being upheld of .85 if it took place where the defendant had no property interest (a search of a third person leading to discovery of the defendant's contraband, for example) would have a probability of being upheld of .41 if the search had instead been on the defendant's person.

The distinction between a "full search" and a "limited intrusion" is the second aspect of the nature of the search. Although 71% of the limited intrusions were upheld, only 53% of the full searches were sustained. A stop and frisk that has a probability of .70 of being upheld would as a full search have a probability of .40 of being upheld.

Against the factors that make a search more unreasonable must be weighed those factors that will make a search more reasonable. In terms of prior justification for a search, the two most important factors are having a warrant and probable cause. The existence of a warrant adds .95 to the cumulative probability function. Controlling for other variables shows that a search that had a probability of .5 of being reasonable without a warrant has a probability of being reasonable of .83 with a warrant.

The probable-cause variable did not fare as well. As discussed earlier, probable cause cannot be operationalized as the Supreme Court's decision on probable cause because its value is not known before the Court's opinion is released and, more important, because the Court's decision on probable cause is not clearly independent of its decision on the reasonableness of the search. As such, probable cause was operationalized as the lower court's decision on probable cause, which proved to be a not very reliable indicator. The estimate of –.32, although substantively small and statistically insignificant, suggests a negative relationship between a lower court finding of probable cause and the reasonableness of the search. The Supreme Court did, however, uphold 53% of the searches in which it did not find probable cause, as opposed to 65% of the searches in which it did. Probable cause is undoubtedly important; the trouble remains in trying to operationalize it.

Although probable cause and a warrant often help make an otherwise unreasonable search reasonable, searches can still be judged reasonable without them. The Supreme Court has taken note of several exceptions to the probable-cause and warrant requirements. The most important of these involves the right to search incident to an arrest. Table 1 shows clearly that when the lower court finds that a search took place incident to a lawful arrest, as compared to a search that was not preceded by an arrest, the Supreme Court will quite likely find the search to be reasonable. The cumulative normal probability function is increased by 2.30 S.D. A search that would have a probability of .50 of being upheld if there were no arrest would have a .99 probability of being upheld if incident to a lawful arrest. If the search were after, but not incident to, a lawful arrest, the probability would increase greatly but not quite as much. The parameter estimate of 1.22 would increase the probability of reasonableness from .50 to .89.

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The value for an unlawful arrest was expected to be zero. An unlawful arrest certainly cannot justify an otherwise unreasonable search, but it also seems plausible that such an arrest should not make an otherwise reasonable search unreasonable. The estimate of −.57 is statistically insignificant, yet if this is the true value, it would have a moderate affect on the reasonableness of a search. A search that had a probability of .50 of being reasonable without an arrest has only a probability of .28 of being reasonable if preceded by an unlawful arrest.

The other exceptions were added together to form an exceptions variable. For each exception found in a case, 1.36 is added to the cumulative normal probability function. The typical effect is not much different from that of a search after a lawful arrest.

Finally, I have suggested that we must be concerned with at least one factor that does not directly affect the reasonableness of a search: change in the Court's membership. The change variable, which ranges from 0 to 5, is 0 during the Warren Court and increases by 1 for each Nixon and Ford appointee. The full difference between the Warren Court and the Burger Court after the appointment of Stevens is .80 (.16 × 5). A search that for the Warren Court had a probability of .38 of being upheld (they in fact upheld 38% of the searches before them) would have a probability of .69 of being upheld by the Burger Court. A search that for the Warren Court had a probability of being upheld of .50 would have a probability of .79 of being upheld by the pre-O'Connor Burger Court. It is interesting to note that a search with a warrant during the Warren Court would be almost as likely to be upheld as a similar search without a warrant by the pre-O'Connor Burger Court.

The United States as a Party to the Suit. Thus far only legal variables are considered in the model, those that relate directly to the reasonableness of the search, and one variable that measures changes in the Court's personnel, which is included not because it helps to gauge the reasonableness of a search, but because it helps to gauge the given Court's belief about the reasonableness of a search. It is possible, however, that the Court's decisions in search and seizure cases are concerned with more than the reasonableness of the search; there might be extralegal factors unrelated to the reasonableness of the search that nevertheless affect the Court's decisions.

Rokeach (1968) has argued that attitudes involve both an attitude toward an object (AO) and an attitude toward a situation (AS). Spaeth and Parker (1969) have shown this to have relevance to Supreme Court decisions. In the search and seizure cases the situation is obviously a search, a seizure, or both. The objects conducting the search are either state or federal officials. It therefore might be interesting to question whether the Court acts differently when the United States is a party to the suit.[35]

Much has been written claiming that the Supreme Court's responsiveness to the United States as a party is a vital factor in the Court's decision to grant certiorari (e.g., Tanenhaus et al., 1963). Does this favorable predisposition carry over to final decisions? Analysis by Spaeth and Teger (1982) shows the Court supporting the government 69.7% of the time in the 1966-1967 terms and 67.8% of the time in the 1969-1973 terms. Throughout these terms, only Douglas supported the federal government less than half of the time. The general support trend holds for criminal procedure cases. These and other studies showing support for the federal government as opposed to its adversaries are enlightening and might lead us to believe that in our search and seizure cases the Court may, on the whole, be predisposed to favor the government. But before we can use this information to help us explain specific Court decisions, we must have a point of comparison. In our population of search and seizure cases, those cases that do not involve the federal government do involve the state government. Our question is not whether the Supreme Court is more favorable to the United States than its adversaries; rather, we are concerned with whether the Supreme Court is more favorable to the federal government than it is to the states.

The model was rerun including a dummy that measured when the United States was a party to the suit. A comparison of the two models is presented in Table 2. Although the estimated R^2 barely improved and the percentage of cases categorized correctly did not improve, the overall fit of the model, as measured by $-2 \times$ LLR, represents a statistically significant improvement over the fit of the first model (see Aldrich, 1977). Furthermore, the point estimate of .59 is of moderate size and is statistically significant. A state search that had a probability of .50 of being upheld would have a probability of .72 of being upheld if it had been a federal case. What is so important about this finding is that it is the result *after* the facts of the case have been taken into account. The preference given to the United States does not

[35]Although other factors such as race or social class might have some influence, they do not seem to be salient for search and seizure decisions. This point is supported by Spaeth and Parker (1969), who found that Warren Court did not decide cases on the basis of whether or not the litigants were black. In addition, such information is contained neither in the Supreme Court's nor the lower court's statement of facts.

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Table 2. Probit Estimates With and Without the United States as a Variable

	Without U.S.	With U.S.
Home	−2.31***	−2.12***
Business	−2.19***	−2.06***
Car	−2.02***	−1.86**
Person	−1.28**	−1.15*
Search	− .77*	− .91*
Warrant	.95*	.94*
Probable cause	− .32	− .29
Incident lawful arrest	2.30**	2.30**
After lawful arrest	1.22**	1.34**
Unlawful arrest	− .57	− .33
Exceptions	1.36***	1.23***
Change	.16*	.16*
U.S.	–	.59*
Summary Statistics with U.S.		
Constant	1.07	
Est R^2	.58	
$-2 \times$ LLR (X^2_{13})	57.51**	
Mean of dependent variable	.55	
% categorized correctly	76	
$n = 123$		

*Significant at .05.
**Significant at .01.
***Significant at .001.

appear to be the result of federal searches being less severe than state searches.

The Residuals. The first model correctly categorized 76% of the Court's decisions. As Table 3 shows, the model predicted the Court's conservative decisions (81% correctly categorized) more accurately than its liberal decisions (67% categorized correctly). Table 4 shows what happens when the predictions are broken down by Court. The Warren Court's decisions were predicted with significantly greater accuracy: 86% to 70%. for the Warren Court, 12 of 15 conservative decisions were categorized correctly, as were 24 of 27 liberal decisions. The Burger Court's conservative decisions were predicted with the same degree of accuracy as the Warren Court's, but only 14 of the 28 liberal Burger Court decisions were correctly categorized.

Predicting from the Model: The 1981 Term. It is one thing to fit a line to previous behavior; it is quite another if that line fits future behavior as well. The original model was applied to the search and seizure decisions of the October 1981 term. This set involves seven different decisions over five different cases. (Two of the cases had two distinct decisions.) Five of the decisions were conservative, two were liberal. The model predicted all five of the conservative decisions correctly and one of the two liberal decisions. The incorrect prediction involved the admissibility of a voluntary confession made after an unlawful arrest. To the 5-4 majority, the confession could not be admitted because it was the result of an unlawful seizure. Although we are dealing with a limited population, that six of seven cases were predicted correctly suggests that the model has predictive as well as explanatory value.

Discussion

The parameter estimates are certainly interesting, but great care must be taken in interpreting them. Since dummy variables were used, it is important not to compare the magnitude of the coefficients without considering the baseline from which they were measured. For the prior justification variables, the arrest variables, and the exceptions variable, the baseline was zero. When prob-

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Table 3. Predicted Decisions Compared with Actual Decisions[a]

	Actual		
Predicted	Conservative	Liberal	Total
Conservative	55 (81%)	17 (33%)	72
Liberal	13 (19%)	38 (67%)	51
Total	68	55	123

[a]76% of the decisions were predicted correctly.

able cause had the value zero, there was no probable cause; when the arrest variables all had the value zero, there was no arrest. Compare this to the search variable; when the search variable was zero, there was no search, but there still was some form of intrusion. If we were measuring this from a baseline of no intrusion the value would be very large, because if there were no intrusion, it would be extremely doubtful that the search could be unreasonable. Alternatively, consider the variables that measure where the search took place; they all take on the value zero when the search occurred where the defendant does not have a property interest. The value for *home* is not so large because one's home receives extraordinary amounts of protection, but, relatively speaking, because it receives much more protection than areas over which one has no property interest.

The above notwithstanding, the parameter estimates tell us quite a bit about the Supreme Court's search and seizure decisions. Although one's home seems to have more protection than one's business, which in turn has slightly more protection than one's car, the differences are not as substantial as one might have supposed. A search of a home that has a probability of .50 of being upheld would have a probability of .61 of being upheld if it instead were a search of a car. This factor certainly affects the reasonableness of the search, but compared to other factors that can intervene, it is far from determinative. Other points might seem to belabor the obvious—it is better to have a warrant than not to, full searches are inherently less reasonable than a stop and frisk—yet these points have not heretofore been demonstrated empirically.

It must be noted that, as in other areas of political inquiry, prediction will not work as well as retrodiction. The parameter estimates are derived so as best to fit the existing data set, not future ones. Also, the model is unable to predict what tomorrow's exceptions will be. The good faith exception, for example, may or may not dramatically change the Court's decision making. The model obviously cannot predict changes in doctrine. Finally, changes in the Court's membership can always have untold consequences. This fact should not, however, keep us from trying.

Conclusions

The results presented herein are very pleasing. It seems as if the model has taken one of the Court's most difficult areas, one characterized as "inconsistent," "bedeviling," and even "a mess"

Table 4. Predicted Decisions Compared with Actual Decisions, Controlling for Court

	Actual		
Predicted	Conservative	Liberal	Total
Warren Court[a]			
Conservative	12 (80%)	3 (11%)	15
Liberal	3 (20%)	24 (89%)	27
Total	15	27	42
Burger Court[b]			
Conservative	43 (81%)	14 (50%)	57
Liberal	10 (19%)	14 (50%)	24
Total	53	28	81

[a]86% of these cases were predicted correctly.
[b]70% of these cases were predicted correctly.

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and found for the first time a clear and logical form. The legal model was quite satisfactory, yet evidence suggests that the Court is not immune from considering extralegal characteristics too.

Perhaps the reason for the bedevilment is that those who have been bedeviled have been too reliant on the case method as the means for analyzing these decisions. Such reliance seems reasonable enough. The opinion delivered in any given decision more often than not relies upon a single aspect of the case, for example, was there probable cause, or is a search several hours after a lawful arrest reasonable? Yet the decision itself is dependent upon many factors—presumably those mentioned above—that go largely undiscussed in the main body of the opinion. In a probable cause determination, it is all very well to know that probable cause was sufficiently established, but when it comes to understanding the decision itself, we must know where the search took place, the extent of the intrusion, and whether any exceptions were present, as well as the makeup of the Court.

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