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# *The Interplay of Preferences, Case Facts, Context, and Rules in the Politics of Judicial Choice*

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In this paper, we explore linkages between electoral politics and judicial voting behavior in the context of models that take into account personal, contextual, institutional, and case-related influences on courts. Using probit (ordered and binary), we examine the votes cast in death penalty decisions by supreme court justices in eight American states from 1983 through 1988. We anticipate and find evidence that institutional features are prominent in shaping the distribution of institutional preferences. Fundamentally, justices have predispositions that are consistent with the states' electoral and ideological environments. Moreover, these institutional arrangements subsequently enhance or restrict opportunities for individual members, once selected, to exhibit their predispositions. Personal preferences notwithstanding, individual justices' support for the death penalty is affected by competitive electoral conditions and institutional arrangements that create linkages with the political environment. Finally, when we control for the effects of personal, contextual, and institutional features, case-specific variables emerge as critical determinants of the judicial vote.

**I**n this paper, we explore linkages between electoral politics and judicial voting behavior in the context of models that take into account personal, contextual, institutional, and case-related influences on courts. We begin with a simple proposition: the past behavior of appellate court judges is an excellent predictor of their subsequent behavior. Whatever the source of their predispositions, ideological or otherwise, judges behave in very consistent patterns over time. Indeed, this fundamental proposition has been more than adequately documented in studies of judicial voting, beginning with the pathbreaking work of the early behavioralists (e.g., Danelski 1966; Pritchett 1941, 1948; Rohde 1972; Rohde and Spaeth 1976; Schubert 1965, 1974) and continuing with the recent, highly

This research was truly collaborative. Order of authorship was assigned randomly. The authors would like to thank Michael Bowers and Laura Langer for suggestions they made on earlier versions of this paper. We are also indebted to Professor Evan Ringquist of Florida State University for use of his measure of state ideology. A previous version of this paper was presented at the 1995 annual meeting of the Western Political Science Association, Portland, Oregon.

sophisticated analysis of Segal and Spaeth (1993). Quite simply, at least in the United States Supreme Court, past voting behavior is a superb indicator of how justices vote in future cases.

Given this basic tenet, we examine judges' predispositions as both dependent and independent variables, in an effort to unravel the impact of institutional arrangements on the politics of judicial choice and to understand, in a more comprehensive way, the process of judicial decision making. First, we examine the forces that contribute to the establishment of justices' predispositions in American state supreme courts, and the role that institutional arrangements play in shaping them. Then, in a model that controls for these predispositions, we identify the forces that facilitate or inhibit the willingness of individual justices to manifest their predispositions in the cases immediately before their courts.

What we anticipate, and find evidence for, is that institutional features are prominent in shaping the distribution of preferences within an institution. Various institutional arrangements, such as selection procedures, systematically influence, in the long term, the overall predispositions of those who occupy the bench. Moreover, these institutional arrangements subsequently enhance or restrict opportunities for individual members, once selected, to exhibit their predispositions. Finally, when we control for the effects of personal, contextual, and institutional features, case-specific variables emerge as critical determinants of the judicial vote. On the issue of the death penalty, state supreme court justices seemingly find it difficult to ignore the presence of particular case facts designated specifically by statute to trigger the assignment of death sentences to criminal defendants.

Our most fundamental point is this: To understand judicial behavior, the pivotal role of institutions must be taken into account. Institutional arrangements, including recruitment and retention processes, exert both direct and conditional influences on courts, and these influences must be modeled to achieve a satisfactory representation of the judicial vote. Stated differently, judicial decisions are considerably more than the simple product of the cases at hand, the judges rendering decisions, or the environments within which courts operate. Judicial decisions are shaped in important ways by preexisting choices about how courts are structured. Consequently, omitting institutional features renders models of judicial behavior simplistic and incomplete.

Perhaps it is best to note at the outset that this study is highly compatible with the attitudinal model that dominates the study of the U.S. Supreme Court. In their recent work, Segal and Spaeth (1993) demonstrate conclusively that votes cast by members of the U.S. Supreme Court largely reflect the justices' political preferences, called into play by the facts of the cases. Segal and Spaeth establish definitively that Supreme Court justices behave in very predictable patterns, as a direct result of the stability of attitudes driving their votes.

Because Segal and Spaeth (1993) were studying a single institution, they were unable to test institutional hypotheses related to the attitudinal model. Nonetheless,

Segal and Spaeth were extremely careful to describe the institutional features that seem to promote the decisional patterns observed. Regarding the effects of the selection process, Segal and Spaeth discuss the ability of presidents to shape the character of the Supreme Court through nominations. As others also have documented (e.g., Abraham 1974; Rohde and Spaeth 1976; Schmidhauser 1979), Segal and Spaeth note that presidents seek to maximize their impact on public policy by appointing people to the Supreme Court who share the president's ideological orientations. In the long term, presidents determine the distribution of preferences within the Court. Second, Segal and Spaeth observe that members of the Supreme Court, once appointed, are free to decide cases in accordance with their preferences because, among other things, there are no effective sanctions connected with doing so. In other words, Supreme Court justices enjoy tremendous discretion and cast votes within a relatively unconstrained environment.

These propositions about the U.S. Supreme Court are virtually indisputable. But what about judges deciding controversial cases in different institutional contexts? Are they as likely as members of the U.S. Supreme Court to cast votes that reflect their personal preferences? And what about the effects of alternative selection procedures on the characteristics of judicial institutions? Should we expect the various alternative recruitment and retention systems systematically to influence the characteristics of those chosen for the bench and also to affect the decision-making process itself?

Based on the neoinstitutional perspective (see, e.g., Brace and Hall 1990, 1993; Hall and Brace 1989, 1992) and previous research (Brace and Hall 1995; Hall 1987, 1992, 1995), we believe that the process of judicial decision making will be quite different for those who face possible sanctions (e.g., electoral defeat, appellate reversal) for taking certain positions on issues, despite the fact that these judges are likely to have the same stable, strongly held preferences toward public policy as members of the U.S. Supreme Court. We also believe that selection procedures systematically condition the overall composition of courts, as well as shape the behavior of judges.

In the pages below, we model judicial choice as a tradeoff between the justices' personal predispositions and the specific attributes of the case at hand, conditioned by the institutional and contextual environments of courts. We test these propositions using as our data base the votes cast in death penalty cases by the individual justices in several American state supreme courts. We examine state supreme courts because of the need for a comparative context to examine systematically the impact of alternative institutional settings on judicial choice.<sup>1</sup> We analyze the issue of the death penalty because it is a highly salient issue where

<sup>1</sup>As noted in one authoritative volume, "comparative research is inquiry in which more than one level of analysis is possible and the units of observation are identifiable by name at each of these levels" (Przeworski and Teune 1970, 36).

multiple political and legal forces are likely to be at play, allowing us to examine the wide array of influences demonstrated to affect judicial behavior. But most basically from a practical standpoint, there simply are no other available data sets that permit the testing of hypotheses about the effects of alternative institutional structures or contexts on the judicial vote. Needless to say, creating such data bases is an extremely labor intensive and time-consuming enterprise.<sup>2</sup>

### MODELING JUDICIAL CHOICE

The scholarship of modern judicial politics has established definitively that judicial choice is influenced by a variety of legal and political forces. Based on studies of both federal and state appellate courts, scholars have determined that the votes cast by appellate court judges in the cases before their courts are influenced by at least four primary factors.<sup>3</sup>

First, case facts and other legal stimuli significantly influence judicial choice (Brace and Hall 1993; Emmert 1992; Emmert and Traut 1994; George and Epstein 1992; Hall and Brace 1994, 1996; Segal 1984, 1986; Segal and Spaeth 1993; Songer and Haire 1992). Second, the judges' individual ideological predispositions (Danelski 1966; Pritchett 1941, 1948; Rohde 1972; Rohde and Spaeth 1976; Schubert 1965, 1974; Segal and Cover 1989; Segal and Spaeth 1993), or personal attributes that serve as their surrogates (Brace and Hall 1993, 1995; Goldman 1966, 1975; Hall and Brace 1992, 1994, 1996; Tate 1981; Tate and Handberg 1991; Ulmer 1970, 1973a), play a critical role in judicial decision making. Third, the political, economic, and social environments within which judges operate shape the judicial vote (Brace and Hall 1990, 1993, 1995; Canon and Jaros 1970; Glick and Pruet 1986; Glick and Vines 1973; Hall and Brace 1992, 1996; Jaros and Canon 1971). Fourth, institutional arrangements affect

<sup>2</sup>We leave a substantive focus on the death penalty *per se* to other papers.

<sup>3</sup>Other types of variables have been identified as potentially important influences on judicial choice, although in most cases the evidence about their influence is mixed. More importantly, most are not relevant to this study. For instance, litigant status has a debatable influence on state supreme court decision-making. Being a repeat player or an organized interest seems to have no impact in the U.S. district courts (Epstein and Rowland 1991) or the U.S. Supreme Court (Sheehan, Mishler, and Songer 1992). However, there may be an advantage for certain types of litigants in the courts of appeals (Songer and Sheehan 1992). In any case, the only litigant pattern in death penalty cases is the state versus individual defendant. Similarly, many studies have noted the status enjoyed by the solicitor general (and federal government) before the U.S. Supreme Court (e.g., Sheehan, Mishler, and Songer 1992; Tanenhaus et al. 1963). Obviously the solicitor general does not engage in the litigation considered in this paper. Similarly, public opinion may influence judicial behavior (Kuklinski and Stanga 1979; Mishler and Sheehan 1993). We attempt to emphasize the importance of public sentiment with the state ideology variable. Finally, the participation of *amici curiae* may or may not be important (see Caldeira and Wright 1988; McGuire and Caldeira 1993; Songer and Kuersten 1995; Songer and Sheehan 1993), along with the role orientations of the justices (Gibson 1981; Howard 1977; Scheb, Ungs, and Hayes 1989). Unfortunately, data on these dimensions simply are not available.

judicial behavior (Beiser 1974; Brace and Hall 1990, 1993, 1995; Canon and Jaros 1970; Glick and Pruet 1986; Hall 1987, 1992, 1995; Hall and Brace 1989, 1992; Handberg 1978; Sickels 1965).

Broadly speaking, these findings were generated in studies of single institutions, usually the U.S. Supreme Court, and within alternative theoretical frameworks that focus on particular sets of the above variables, to the virtual exclusion of the others. While judicial politics scholars all recognize that multiple forces enter into the judicial calculus, we simply do not know with any precision how these factors perform in singular models, or how these forces interact to produce judicial votes.

Very recently, however, judicial politics scholars have demonstrated an exciting interest in developing more sophisticated models that include multiple sources of influence on judicial choice. For instance, George and Epstein's (1992) model of U.S. Supreme Court decisions on the death penalty includes an interesting variety of both traditional legal and political variables and attempts to wed traditional legal theory with the behavioralist orientation to the study of courts. Similarly, others have made important strides in developing more fully integrated models of decisional behavior in the U.S. Courts of Appeals (Songer and Haire 1992)<sup>4</sup> and state supreme courts (Emmert 1992; Emmert and Traut 1994).

Despite the promising and innovative nature of this scholarship, however, studies generally have failed to specify models across micro- and macro-levels of analysis that include features of institutions as variables, largely because of the continued reliance on the case-study approach to the study of judicial politics. Studies of single institutions simply cannot be used to evaluate, except over time, the effects of alternative institutional or contextual influences on judicial choice. This strikes us as particularly problematic, given the mounting evidence (Brace and Hall 1990, 1993, 1995; Hall and Brace 1989, 1992, 1996) that institutional arrangements and contextual forces are critical, both additively and interactively, to the politics of judicial choice. At this stage of scientific inquiry, we simply do not understand the role of institutions and context in the process of judicial decision making very well, leaving our theories of judicial choice incomplete. And we have hardly even begun the task of unraveling the complex interactions between institutional arrangements and other forces affecting judicial choice, a process seemingly essential to achieving a realistic representation of the judicial calculus.

Moreover, we have produced a set of confused and contradictory findings about the influence of particular variables on judicial choice. With the primary focus

<sup>4</sup> Although they do not include institutional features or environmental forces because of the type of judicial institution being examined, Songer and Haire (1992) examine a wide array of forces influencing judicial choice. In their model of voting on obscenity cases by the judges of the U.S. Courts of Appeals, they consider personal attributes, Supreme Court precedent, litigant characteristics, fact patterns, and legal arguments.

of judicial politics scholarship on the U.S. Supreme Court, we have identified rather conclusively the most significant factors affecting these justices' decisional behavior. However, when the performance of those variables is examined in other courts, research yields a mass of inconsistent results. Most essentially, the study of judicial behavior lacks conclusive evidence about the general magnitude and direction of the influence of particular variables on judicial voting behavior.

For instance, studies of the U.S. Supreme Court have established definitively that the partisan affiliations of the justices are an important correlate of their behavior. Democrats exhibit more liberal leanings than their Republican colleagues when casting votes on the wide array of issues before the Court. However, as Carp and Stidham (1990, 269) report, "we know for a fact that partisanship among state jurists is not strongly uniform across the country." Unfortunately, this type of confusion is not limited to a single variable but rather permeates the judicial politics literature. We reiterate that results generated from single-court studies are not necessarily generalizable and may, in fact, present a very inaccurate picture of the process of judicial voting broadly considered.

In our estimation, the study of judicial behavior is ripe for analysis that is comparative in nature, focusing on the influence of both macrolevel and micro-level forces. Such investigations will enhance our understanding of the complex nature of judicial decision making and will serve to reconcile previous inconsistencies in the literature. With these goals in mind, we utilize the comparative research design described below to explore how institutional and contextual forces affect the exercise of judicial discretion or, more specifically, how institutional arrangements interact with personal and contextual variables to create important linkages between justices in the states' highest courts and the political climates within which they operate.

#### RESEARCH DESIGN

This study focuses on the individual votes of the supreme court justices in eight states (Arizona, California, Illinois, Kentucky, Louisiana, North Carolina, Ohio and Texas) from 1983 through 1988 in the death penalty decisions issued by these courts. We selected these particular state supreme courts for evaluation because they exhibit substantial variability on a number of important dimensions: their propensity to uphold death sentences, their institutional structures, and their political environments, among others.<sup>5</sup> These courts also provide regional

<sup>5</sup>This paper is part of an ongoing program of research that began almost a decade ago. These states were chosen largely to allow us to test a set of hypotheses about the effects of institutions on judicial behavior and were added as time permitted. Our choice maximizes variation in such features as selection system, internal operating rules, and intermediate appellate structure. The time frame developed somewhat idiosyncratically, in the sense that we started with an earlier study by Hall (1987) and added to that base. Once a sufficient period was established for analysis, we chose to expand the data set cross-sectionally rather than longitudinally. We reiterate that there are no other data sets

representation. Because the specific focus of this research is on death penalty votes in eight state supreme courts from 1983 through 1988, we employ a pooled cross-sectional time series design.

We collected the voting data for this study from the various West reporters. As previously stated, our primary goals in this research are twofold. First, we wish to identify the factors associated with overall patterns of voting for the justices, or their overall predispositions. Second, we seek to assess the conditions under which justices are willing to manifest these predispositions in any given case before the court.

In each case challenging the imposition of the death penalty, a justice can vote either to overturn the defendant's death sentence (usually deemed a liberal vote) or to uphold a defendant's death sentence (generally considered a conservative position). We coded individual votes to support the death penalty as 1 and votes opposing the death penalty as 0.

Using this basic coding scheme, we created two dependent variables, which represent the two research foci just described. First, we constructed a variable, *predisposition*, which summarizes each justice's votes in the last five death penalty cases decided by the court. This variable is a moving sum of a justice's votes on the preceding five death penalty cases. The sum ranges from 0, which would result if a justice voted to overturn the sentences in each of the five preceding cases (indicating perfectly consistent liberal voting in the past five cases), to 5, which would occur if a justice had voted to uphold each of the five preceding death sentences (indicating perfectly consistent conservative voting). In between these two extremes are variations in liberalism and conservatism depending on the consistency with which a justice voted to uphold or overturn death sentences. The second dependent variable consists of each vote cast by each justice in the individual cases before their courts, equaling 1 for a vote to uphold a death sentence, and 0 for a vote to overturn a death decree.

We estimate two separate models for each of these dependent variables. Model One examines *Predisposition* as a dependent variable and identifies the personal, institutional, and contextual forces that contribute to the justices' voting patterns over a series of cases. Consistent with the attitudinal model, we expect personal attributes, which serve as surrogate measures of attitudes, to figure prominently in this model. However, we also expect that the effects of these personal attributes will be conditioned by institutional arrangements. Further, various institutional processes and state environmental influences should influence directly the justices' general predispositions. Because of the categorical nature of the dependent variable, we utilize ordered probit to estimate the model. Ordered probit is a generalization of dichotomous probit to dependent variables with

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available for testing institutional and contextual hypotheses about courts, and creating this data base has been a considerable enterprise.

multiple categories that take on a finite number of values and possess an ordering (see, e.g., Greene 1993; King 1989). Thus, in this analysis we seek to identify the forces that distinguish liberal predispositions (lower categorical values) from conservative predispositions (higher categorical values).

Model Two seeks to evaluate the forces operating on judicial votes in single cases before a court, holding the effects of justice *Predisposition* constant. In other words, knowing how a justice has voted in the preceding five cases provides a strong indication of his or her attitude toward the death penalty. Knowing this, we examine the remaining effects of personal attributes, contextual and institutional influences and their statistical interactions, and salient characteristics of the case at hand. As the literature so strongly suggests, we expect the effects of predispositions to dominate this model. However, we also anticipate that when justices depart from these predispositions, it will be because of the specific features of the cases before the courts. In other words, we expect changes in a justice's overall pattern of behavior to be case driven. Given the binary nature of this dependent variable, we utilize dichotomous probit to estimate Model Two.

We wish to note explicitly that the predisposition and vote variables do not present a problem of circularity whereby the same votes are used as both independent and dependent variables in Model Two. Instead, a justice's preceding five votes (*Predisposition*) are used to predict the sixth (*Vote*). In this same regard, a vote is not included as a dependent variable until the justice has cast five previous votes, thus establishing a predisposition.

#### *Specific Variables Included in the Models*

The specific variables selected for inclusion in the two models are those that were identified in previous research as important and that were available for the justices and states in this analysis.

*Political Preferences.* To represent fundamental political forces in our models, we include variables for the justices' individual ideological preferences, the ideological and electoral environments of the states (contextual variables), and important institutional arrangements. In terms of individual preferences, we are immediately confronted with a problem endemic to all judicial behavior research: direct measures of justices' ideological preferences simply do not exist. To deal with this problem, judicial politics scholars routinely depend upon the use of personal attributes as highly effective surrogates for these preferences. As Tate (1981) noted, attitudes and attributes may be operationally interchangeable.<sup>6</sup>

<sup>6</sup>In early empirical research, scholars utilized justices' voting records to create measures of ideological preferences. However, such an approach is highly problematic, both logically and conceptually. Given the considerable number of justices serving in the supreme courts of eight different states from 1983 through 1988, it would be enormously difficult to gather that information for this study. Conceptually, such measures present a serious circularity problem, with votes being used

Therefore, as surrogate measures for the individual justices' preferences, we include in our models two personal attributes identified in past research to be critical to judicial choice: the partisan affiliations of the justices and each justice's age at the time the vote was cast.

As the literature has established, though not uniformly, as noted earlier, partisan affiliation taps ideological differences among justices. Studies of the U.S. Supreme Court (Tate 1981; Tate and Handberg 1991), other federal courts (Carp and Rowland 1983; Goldman 1966, 1975; Songer 1982; Songer and Davis 1990) and state appellate courts (Brace and Hall 1993; Hall and Brace 1992, 1994; Nagel 1961; Ulmer 1962) have found distinctive voting patterns between Democratic and Republican judges, with Democratic judges being more liberally inclined on a variety of issues. Based on these previous works, we expect Democratic state supreme court justices to be less likely to uphold death sentences than their Republican counterparts, other things being equal. In the analysis, we coded *Party f* as 1 for justices who are Democrats, or 0 otherwise.

The second attribute we include in our models is *Age*. A judge's age can provide a crude but effective measure of the generational experiences brought to the bench. Previous studies (e.g., Ulmer 1973a; Tate 1981; Hall and Brace 1992) present rather conflicting findings about the influence of a judge's age on voting. However, judges of a common birth cohort should have been exposed to many of the same legal teachings and are likely to have been influenced by similar jurisprudential trends in their lives. In terms of the death penalty, because older judges can be expected to have been influenced less by the liberal judicial activism of the fifties and sixties, we predict that older state supreme court justices will be more inclined to support capital punishment, *ceteris paribus*.

While *Age* can serve to summarize generational experiences, it can also capture life-cycle effects. It may be the case, as has been considered elsewhere (Ulmer 1973b, 1979; Segal 1986), that judges become more conservative with age. Although the data will not allow us to decide whether the effects of age are generational or reflect a life cycle, we nonetheless expect that older justices in state supreme courts will be more likely than their younger colleagues to support the imposition of the death penalty. We incorporate the age in years of the justice casting each death penalty vote as a variable in the models.

We include a third personal attribute in our models: being a new member of the court. The inclusion of the variable *New Member* allows us to distinguish between new and continuing members, in order to examine the effects of mem-

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as both the independent and dependent variables. Moreover, given the numerous influences on judicial choice, voting records should not be considered mere summaries of individual preferences, especially in courts other than the U.S. Supreme Court. Unfortunately, alternative sources of information for establishing measures of attitudes independent of voting behavior, such as newspaper editorials on judicial nominees, utilized by Segal and Cover (1989) and Emmert and Traut (1994), are not so readily available, especially for justices who are elected rather than appointed.

bership replacement on support for the death penalty. We coded this variable 1 for every justice joining the court during the period being observed (1983–84, 1985–86, or 1987–88), or 0 otherwise.<sup>7</sup>

Finally, we expect that the effects of attribute characteristics will be contingent upon institutional context. Specifically, we anticipate that factors related to electoral politics will modify the effects of individual partisanship, as previous work has demonstrated (Brace and Hall 1995; Hall 1987, 1992, 1995). The length of the judicial term (*Term Length*) should affect the willingness of justices to manifest their partisanship. We describe this interaction in greater detail below.

*Political Environment/Context.* We include two contextual variables, *State Ideology* and *Electoral Competition*, in our models of judicial choice. On a publicly salient issue like the death penalty, we expect conservative political environments to reduce the willingness of justices to reverse death sentences. Alternatively, liberal political environments should increase the likelihood of justices voting to overturn death sentences.

To assess the effects of ideological environments on state supreme court decision making, we need a general measure of the issue preferences of each state's population over time. There have been two approaches to deriving these measures. The first, a survey-based measure, canvasses a representative sample of a state's population and asks those being surveyed to place themselves on a left-right continuum. Unfortunately, no one to date has undertaken a state-by-state survey explicitly to measure ideology, simply because of the serious costs and logistical difficulties involved (see Holbrook-Provo and Poe 1987). However, Wright, Erikson, and McIver (1985; see also Erikson, Wright, and McIver 1993) have devised a solution to these problems. These authors aggregated multiple national polls over the 1976–1982 period, giving them 76,000 observations. They then disaggregated these multiple national samples to the state level in order to estimate state ideology.

In practical terms, the measure developed by Wright, Erikson, and McIver is the best survey-based measure of political ideology. Unfortunately, this measure has severe limitations, both for the current study and in general. As noted above, the measure is computed with data from 1976 to 1982, a period that does not correspond well with the time frame examined in this study. Moreover, while the average state sample size on which this measure is based is 1,491, there are 14 states with samples of less than 500. Finally, this measure provides only a single, cross-sectional summary of state ideology when what is needed is a longitudinal measure that adequately captures variations in liberalism and conservatism over time.

A second approach to measuring state ideology uses information about the roll-call voting behavior of each state's congressional delegation (Holbrook-Provo

<sup>7</sup>We obtained information about each justice's party affiliation, age, and year of joining the court from *The American Bench*.

and Poe 1987). By aggregating various roll-call measures of conservatism and liberalism, a longitudinal measure of state ideology can be computed. Roll call-based measures have been demonstrated to be valid and reliable measures of state ideology and perform on a par with the disaggregated survey-based measure of Wright, Erikson, and McIver (1985). The special advantage of this approach to the current analysis is that ideology scores for the states can be computed contemporaneously and longitudinally; therefore, we adopt this approach.

Specifically, our measure of *State Ideology* averages the ADA, ACLU, and COPE scores for each party in a state's congressional delegation. These scores then are weighted by party strength in the state legislatures. From these weighted partisan scores, a weighted average is computed for the years 1981 through 1986 (ideology is lagged two years in the analysis). The scores range from 0 (most conservative) to 100 (most liberal).<sup>8</sup>

The second state environmental feature included in the analysis (*Electoral Competition*) is the district-level measure of competition developed by Holbrook and Van Dunk (1993). We expect the effects of *Electoral Competition* to be conditioned by both the ideological climate of a state and the method used in selecting and retaining judges. In liberal, electorally competitive states using the partisan or nonpartisan ballot in judicial selection, for example, we expect justices to be more liberal in their death penalty voting. Thus, we expect the effects of the contextual features to be conditioned by institutional arrangements. Because the death penalty is a very salient issue with strong public support, we anticipate that the effects of a state's liberalism and electoral competition will be contingent upon institutional features related to the electoral system. On a politically volatile issue like the death penalty, judges should be more inclined to reflect their political environments if they can be challenged by opponents in election campaigns and then removed from office by voters for their defiance of constituent preferences. And of the types of judicial elections, partisan and nonpartisan elections (as opposed to retention elections) are the most competitive and least safe for incumbents (Dubois 1980). Therefore, we treat *State Ideology* and *Electoral Competition* as interaction terms with *Ballot* (type of ballot), as described below.

*Institutional Influences and Interactions.* Among the most fundamental features of any institution are the rules governing the selection and tenure of its members.

<sup>8</sup>In cases where a state had only single-party congressional delegations, the ideological scores were estimated by using the ideology score of the rival party. In other words, the following equations were estimated:

$$\begin{aligned} \text{Democrat Ideology} &= a + b_1 (\text{Republican Ideology}) + e \\ \text{Republican Ideology} &= a + b_1 (\text{Democrat Ideology}) + e \end{aligned}$$

over time for each state that is missing one party in their state delegation for one or more years. For example, in a state with only Democrats in their delegation, Republican Ideology for a given year is estimated by multiplying  $b_1$  and the Republican delegation's ideology score. Each of these scores is weighted by the party's strength in the state legislature, and the final score is computed.

Regarding courts, the American states use a variety of selection procedures to staff the bench. Judges in the states are appointed without ever facing the electorate, are appointed but later face the voters in retention elections, are elected from ballots that do not list the partisan affiliations of the candidates, and are elected from ballots that list the partisan affiliations of those seeking judicial positions.

We expect these variations in selection systems to affect judicial decision making. Generally, given public support for capital punishment, elected judges should be more inclined to uphold death sentences. However, we also expect the structure of the electoral system to interact with the overall political environment, as mentioned above. In terms of our analysis, we predict that selection method (*Ballot*) will condition the influence of a *State Ideology* and *Electoral Competition*, with these contextual features exerting different effects in alternative selection systems. Consequently, we include in the analysis a variable coded 1 for states using partisan or nonpartisan *ballot* selection procedures in supreme court elections, or otherwise 0. We also include interaction terms for *Ballot* and for *State Ideology* and *Electoral Competition*. As stated, partisan and nonpartisan elections, where opposing candidates directly challenge incumbents, pose the greatest threat to incumbents seeking reelection (Dubois 1980).

A second variable related to recruitment and retention, *Term Length*, should be a significant influence on judicial behavior on a publicly salient issue like capital punishment. We include in our models a variable for supreme court term length, coded in years. And, as mentioned earlier, we anticipate that *Term Length* will condition the effects of the partisan affiliations of the justices. While Democrats generally should be more likely to vote liberally, we anticipate a different pattern for those with shorter terms and consequently greater opportunities to be unseated. The willingness of judges, Democrat or Republican, to exhibit partisanship should be significantly shaped by the length of their terms. Therefore, we include an interaction term for *Term Length* and *Party*.<sup>9</sup>

*Temporal Influences.* We capture any general trends that may be influencing the results by including in the models time-point indicator variables. The temporal variables distinguish between forces affecting specific courts and those affecting all courts simultaneously over time. We include dummy variables representing the span of the data minus one period (Period 2 = 1985, 1986; Period 3 = 1987, 1988) in the models. Inclusion of these variables is critical; omission would leave the models underspecified.

*Legal Stimuli: Crime Characteristics.* To represent essential elements of the legal model in our models of judicial behavior, we read the states' statutes governing the death penalty and identified two separate sets of legally relevant case facts. These case-specific variables reflect special circumstances that should trigger the

<sup>9</sup>We derived information about each state's electoral system and supreme court term from *The American Bench*.

imposition of the death penalty. While mitigating circumstances can overcome these aggravating features and result in sentences of life imprisonment rather than death, the presence of any one of these particular case features should make justices more likely to uphold the application of the death penalty.<sup>10</sup>

First, we include variables that focus specifically on the nature of the offense, or variations in the nature of the crimes committed. The eight states in this study, like most states, list various crime factors as aggravating circumstances in their death penalty statutes. Based on our reading of these statutes, we identified the following crime characteristics as important: committing a sexual assault during a murder (*Rape*), committing a robbery during a murder (*Rob*), killing a law enforcement officer (*Copkill*), and committing a kidnapping (*Kidnap*) during a murder. We read the opinions in each case and coded four separate crime-related variables as 1 if present, or otherwise 0.<sup>11</sup>

*Legal Stimuli: Victim Characteristics.* We include a second set of case-related variables that represent the characteristics of murder victims. We coded each case according to whether the victim was an adult female (*Female Victim*), an elderly person (age 65 or over, *Elderly*), a child (age 12 or under, *Child*), and whether there were multiple victims (*Multiple Victims*). Like crime characteristics, these victim characteristics are listed specifically in the statutes as aggravating circumstances or are closely related to the aggravating circumstance of heinous action.<sup>12</sup> A compelling argument can be made that American society is more likely to consider a crime heinous and therefore condemn a defendant to death when the victim is perceived within the culture to be among the more vulnerable classes of society. Also, murdering more than one person clearly places the defendant in the category of dangerous to the public at large.

An important victim characteristic notably absent from our models is the race of the victim, combined with the race of the defendant. Several studies have concluded that race is a factor in imposing death as a punishment in the United

<sup>10</sup>Unlike some types of legal stimuli, the particular case facts included in this analysis are not subjective and can be measured in a highly reliable way.

<sup>11</sup>These case-related variables differ from those used in George and Epstein's (1992) study of capital punishment cases decided by the U.S. Supreme Court, simply because most of the variables in their study are not relevant to our analysis. For instance, they included such variables as the Solicitor General as participant, whether the crime involved anything less than intentional murder, and whether a mandatory death sentence was imposed. These variables are appropriate for cases decided as early as 1971. However, in the death penalty cases we examine, the solicitor general does not participate. Moreover, during the time period covered in our study, none of the states imposed death for anything other than intentional murder, and all of the state statutes provided for the consideration of death sentences based on aggravating and mitigating circumstances.

<sup>12</sup>Six of the eight states in this study specify multiple murders as an aggravating circumstance. Only two states include as an aggravating factor that the victim was a child or elderly, and none list female victims as an aggravating circumstance. However, these states do have a specification against heinous or especially cruel murders.

States, with black defendants who kill whites much more likely to be condemned to death. However, we do not know the extent to which these variables are relevant to state supreme courts. All studies thus far have been conducted at the trial court level and focus on prosecutorial discretion in seeking the death penalty (Paternoster 1984) or jury decisions about sentencing.<sup>13</sup> And, unfortunately, information about the race of defendants and victims is simply not readily available. The only way to obtain these data would be through on-site inspection of trial court records, the logistics of which would be prohibitive, both in terms of cost and time. We recognize that the omission of these variables represents a potential underspecification problem.

We read the death penalty decisions of the eight courts being examined. Based on information reported in the opinions, we coded four separate victim variables for each case, coding each variable as 1 if present, or otherwise 0. The appendix presents a complete listing of the variables used in this analysis and their measurement.

## RESULTS

Table 1 presents the results of estimating our first model of judicial behavior using ordered probit.<sup>14</sup> Model One examines the sum of justices' voting over five preceding cases as the dependent variable. We wish to identify the forces that contribute to each justice's overall predisposition to support or oppose the death penalty.

What is immediately apparent from the statistics reported in Table 1 is the role played by institutional arrangements in shaping the overall character of the bench. Fundamentally, the justices have predispositions that are consistent with the states' electoral and ideological environments. Various personal, contextual, and institutional features interact to produce distinct behavior patterns among the justices of state supreme courts.

Perhaps the most vivid example is the interaction between *Party* (justice party) and *Term Length*. As Table 1 clearly indicates, Democrats are much more likely to behave like Democrats (i.e., oppose the death penalty) when they are serving in states with longer terms of office (*Term Length*  $\times$  *Party*). In such situations, Democrats are significantly more likely to vote to overturn death sentences over a series of cases ( $t = -19.89$ ). However, in states with shorter terms of office,

<sup>13</sup> See, for example, Loughlin, Sean, "GAO: Race Affects Death Penalty," *New York Times*, 31 March 1990.

<sup>14</sup> The  $R^2$  is based on the Hagle and Mitchell (1992) correction of the McKelvy and Zavoina (1975) procedure for computation. We think that the models perform exceptionally well, given the fact that one set of variables arguably important to death penalty sentencing cannot be included. We refer to characteristics of the offenders. These data simply are not available. Needless to say, inclusion of these variables might enhance the performance of the models significantly.

TABLE 1

## ORDERED PROBIT ANALYSIS OF JUDGES' PREDISPOSITIONS ON DEATH VERDICTS

| Category  | Variable                                      | Dependent Variable = Predisposition (0-5) | Coefficient | SE     | t-ratio | Significance* |
|---|---|---|-------------|--------|---------|---------------|
| Personal attributes   | Party   | 0.1254                                    | 0.0063      | 19.93  |         |               |
|   | Age   | -0.0003                                   | 0.0001      | -3.18  |         | 0.01          |
|   | New Member                                    | 0.1296                                    | 0.0846      | 2.28   |         | 0.05          |
| Contextual influences   | State Ideology                                | 0.1125                                    | 0.0154      | 7.33   |         | 0.01          |
|   | Electoral Competition                         | -0.0816                                   | 0.0088      | -9.23  |         | 0.01          |
| Institutional influences  | Ballot  | -0.1039                                   | 0.4413      | -2.36  |         | 0.05          |
|   | Term Length                                   | -0.0903                                   | 0.0146      | -6.17  |         | 0.01          |
| Conditional (interactive) influences                            | State Ideology $\times$ Competition           | 0.0019                                    | 0.0003      | 6.60   |         | 0.01          |
|   | Ballot $\times$ Competition                   | 0.0048                                    | 0.0015      | 3.27   |         | 0.01          |
|   | Ballot $\times$ Ideology $\times$ Competition | -0.0007                                   | 0.0002      | -4.67  |         | 0.01          |
|   | Term Length $\times$ Party                    | -0.1247                                   | 0.0063      | -19.89 |         | 0.01          |
| Period controls   | Period 2                                      | 0.5172                                    | 0.0912      | 5.67   |         | 0.01          |
|   | Period 3                                      | 0.6708                                    | 0.0915      | 7.33   |         | 0.01          |
| Thresholds  | MU (1)  | 0.4817                                    | 0.0287      | 16.77  |         | 0.01          |
|   | MU (2)  | 1.0706                                    | 0.0366      | 29.29  |         | 0.01          |
|   | MU (3)  | 1.7373                                    | 0.0402      | 43.25  |         | 0.01          |
|   | MU (4)  | 2.6324                                    | 0.044       | 59.87  |         | 0.01          |
| Constant  |   | -3.1826                                   | 0.5911      | -5.38  |         | 0.01          |
| Estimated $R^2 = .24$   |   |   |             |        |         |               |
| Chi-sq. log likelihood ratio test (significance) 1316.57 (.001) |   |   |             |        |         |               |
| $N = 4,116$   |   |   |             |        |         |               |
| Percent in modal category                                       |   |   |             |        |         |               |
| Percent predicted correctly                                     |   |   |             |        |         |               |
| Percent reduction of error                                      |   |   |             |        |         |               |
| 8%  |   |   |             |        |         |               |

\*Two-tailed tests of significance levels are used.

Democrats are positively and significantly ( $t = 19.93$ ) inclined actually to uphold death sentences rather than overturn them. Thus, when faced with more frequent opportunities to be unseated, Democrats support the death penalty, essentially behaving like Republicans. The effects of partisanship seem inextricably tied to the structural characteristics of courts.

As Table 1 also indicates, all of the variables in Model One are statistically significant and in the expected direction, with one exception. The only surprising result is the estimate for *Age*, which is in the opposite direction from that anticipated. Contrary to our expectations, *Age* is associated with opposition to the death penalty, or liberal rather than conservative predispositions. Older justices are more liberal overall than their younger counterparts. While a full consideration of this result goes beyond the scope of this paper, it appears likely that cohort or generational patterns are manifested in death penalty voting. Younger justices appear more inclined to support the death penalty than their older counterparts, and as new justices replace older justices on these courts, these new members appear to be more compatible with the public's growing support for capital punishment.

The estimate for *New Member* also is quite interesting and further supports a generational replacement interpretation. As this variable reveals, justices who joined these courts during the period studied exhibited greater conservatism in their voting in death cases than did members already serving. These newer members have changed the complexion of the courts significantly; overall support for the death penalty has increased through the process of membership replacement. In effect, the public's preferences are translated into judicial choices in the long run through processes of judicial recruitment and replacement.

The performance of the contextual variables is also notable. As predicted, the contextual variables interact with institutional features, exerting different types of influence in alternative settings. Justices in politically liberal, electorally competitive states (*Ballot*  $\times$  *State Ideology*  $\times$  *Competition*) exhibit significantly liberal voting patterns when formally linked to their environments by partisan or nonpartisan elections ( $t = -4.67$ ). Alternatively, the positive and significant ( $t = 6.60$ ) coefficient for the interaction term representing states that do not elect their judges in partisan or nonpartisan elections (*State Ideology*  $\times$  *Competition*) indicates that judges in these states exhibit much greater independence from the pressures of their political environments. Under these conditions, justices in conservative states vote more liberally, and those in liberal states vote more conservatively, than one would expect. However, competition in states with partisan or nonpartisan ballots (*Ballot*  $\times$  *Competition*) promotes greater conservatism in judicial voting on the death penalty.

It is clear from these results that it is not just the ideological climate of a state that influences judicial predispositions on the death penalty. Instead, these contextual influences are conditioned significantly by the type of selection method

operating in a state.<sup>15</sup> As we shall see below, these contextual and institutional features exert significant indirect effects on specific decisions by first shaping the distribution of predispositions of the justices serving on these courts. Preexisting patterns of support for the death penalty are affected by competitive electoral conditions and institutional arrangements that create linkages with the political environment. Supreme courts in liberal states with partisan or nonpartisan ballots and vigorous competition are likely to become comprised of justices less inclined to uphold the death penalty, *ceteris paribus*. Conversely, supreme courts in conservative states with high levels of competition and partisan or nonpartisan ballots are likely to be occupied by justices inclined to uphold the death penalty.

The results concerning *Predisposition* reveal that much is set in motion well before a given case comes to a court. A convicted murderer condemned to death confronts justices who have exhibited varying degrees of support or opposition to death sentences in the past. Are these predispositions likely, then, to affect the manner in which justices decide subsequent cases? Table 2 provides some insight into this question, reporting the estimates for our second model of judicial behavior. As stated previously, Model Two evaluates the effects of individual, contextual, and institutional influences on a given case, with the effects of each justice's predispositions now included in the analysis.

As Table 2 indicates, and as we expected, the likelihood of a justice's supporting the death penalty in any given case is a function of the justice's past behavior. *Predisposition* is positively and significantly ( $t = 14.83$ ) related to support for the death penalty. In fact, the power of this variable is statistically extraordinary. Moreover, contextual and institutional forces, which also contribute indirectly in the model through their influence on *Predisposition*, continue to exert direct effects on judicial choice, although their influence is rather mixed when predispositions are taken into account. Ballot loses significance as a direct influence on vote. This pattern is not surprising, however. Elections influence the predispositions of the people selected for the bench, and once these predispositions are modeled, the effects of elections are diminished. However, *State Ideology* ( $t = 2.96$ ) and *Electoral Competition* ( $t = -3.37$ ) continue to exert significant direct effects on voting, in the same manner as in Model One. The interaction between *Competition* and *State Ideology* indicates that, in the absence of partisan or nonpartisan ballots, justices tend to be more conservative, or more liberal, than one would expect, given the ideological and competitive characteristics of their states. When this variable is interacted with *Ballot*, however, justices in liberal, competitive states are less inclined to support death decrees, and those in conservative competitive states are more inclined to do so. This interaction is statistically significant at the .10 level ( $t = -1.52$ ). The interaction between *Ballot* and *Competition* does not emerge as a statistically

<sup>15</sup>The interpretation of conditional relationships using statistical interaction terms is derived from Friedrich (1982).

significant interaction in this model, suggesting that once justices' predispositions and the other interactions are taken into account, the effects of this measure are reduced.<sup>16</sup>

As before, the effects of the justices' political *Party* affiliations are conditioned by the length of judicial term, with Democrats more likely to support the death penalty on courts with shorter terms. As before, *New Members* are more inclined to uphold death sentences, but this result is only significant at the .1 level ( $t = 1.44$ ). *Age* is not significant in this model, indicating that once the justices' predispositions are taken into account the effects of differential age on judicial voting are nullified.

Probably the most striking feature in Table 2 is the influence of case-related variables on judicial choice. Each of these variables (*Rape*, *Rob*, *Copkill*, *Kidnap*, *Multiple Victim*, *Female Victim*, *Elderly*) exerts a significant influence on support for the death penalty, except the killing of children. Quite inexplicably to us, killing children (*Child*) is negatively associated with upholding death sentences. Overall, it appears that, irrespective of their predispositions, justices find it impossible to circumvent the facts of the cases before them on review.

## DISCUSSION

The preceding analysis leads to some very interesting conclusions about the nature of judicial choice. First and foremost, justices' personal attributes, political context, and institutional arrangements interact to influence judicial outcomes indirectly, by shaping the distribution of preferences on courts, and directly, by shaping the justices' votes in any given case. While Democrats and Republicans generally exhibit behavior patterns that are quite distinct, these distinctions are blurred by variables related to retaining office. Having to face voters more frequently, thereby risking the chance of being removed from office, encourages justices in state supreme courts, who otherwise might vote consistently to overturn death sentences instead, to manifest conservative voting patterns in these cases. Stated differently, the political result of shorter terms of office is a decidedly more conservative bench, at least on the issue of the death penalty. Moreover, the states' ideological and political climates influence the overall composition of courts. Justices selected in liberal, politically competitive states are more likely to be liberal in the long term when partisan and nonpartisan ballots are introduced into the equation. This particular institutional feature seems to be particularly effective in linking justices to their political environments.

<sup>16</sup>We find some evidence that the defeat of Rose Bird and her two colleagues on the California Supreme Court in 1986 may have had judges "running scared." When the model in T. 2 is run with observations from post-1986 only, the coefficient for the *Ballot*  $\times$  *Competition* interaction term emerges as positive and significant at .1, indicating that judges in competitive states using partisan or nonpartisan ballots were more inclined to uphold death sentences after the Bird defeat. No other directional or significance changes were evident in this period.

TABLE 2  
PROBIT ANALYSIS OF DEATH PENALTY VOTES

| Category                             | Variable                                      | Dependent Variable: Uphold Death Penalty = 1, Overturn = 0 |        |       | <i>t</i> -ratio | Significance* |
|--------------------------------------|---|--|--------|-------|-----------------|---------------|
|                                      |   | Coefficient  | SE     |       |                 |               |
| Personal attributes                  | Predisposition**                              | 0.2583   | 0.0174 | 14.83 | 0.01            | 0.01          |
|                                      | Party   | 0.0432   | 0.0086 | 5.05  | 0.01            |               |
|                                      | Age   | 0.0000   | 0.0001 | -0.31 | n.s.            |               |
|                                      | New Member                                    | 0.1838   | 0.1277 | 1.44  | 0.10            |               |
| Contextual influences                | State Ideology                                | 0.0627   | 0.0212 | 2.96  | 0.01            |               |
|                                      | Electoral Competition                         | -0.0409  | 0.0122 | -3.37 | 0.01            |               |
|                                      | Ballot  | -0.4217  | 0.591  | -0.77 | n.s.            |               |
|                                      | Term Length                                   | -0.0365  | 0.0191 | -1.92 | 0.10            |               |
| Institutional influences             | State Ideology $\times$ Competition           | 0.0012   | 0.0191 | 3.38  | 0.01            |               |
|                                      | Ballot $\times$ Competition                   | -0.0017  | 0.591  | -0.84 |                 |               |
|                                      | Ballot $\times$ Ideology $\times$ Competition | -0.0003  | 0.0002 | -1.52 | 0.10            |               |
| Conditional (interactive) influences | Term Length $\times$ Party                    | -0.043   | 0.0085 | -5.04 | 0.01            |               |
|                                      | Rape  | 0.3182   | 0.0645 | 4.93  | 0.01            |               |
| Crime characteristics                | Rob   | 0.1098   | 0.0477 | 2.30  | 0.05            |               |
|                                      | Copkill                                       | 0.2485   | 0.0988 | 2.52  | 0.01            |               |
|                                      | Kidnap  | 0.1647   | 0.0764 | 2.19  | 0.05            |               |

|  |         |        |       |  |  |      |
|--|---------|--------|-------|--|--|------|
| Victim characteristics                           |         |        |       |  |  |      |
| Multiple Victim                                  | 0.3677  | 0.0559 |       |  |  | 0.01 |
| Female Victim                                    | 0.0796  | 0.0511 | 1.56  |  |  | 0.10 |
| Elderly  | 0.1288  | 0.0775 | 1.66  |  |  | 0.10 |
| Child  | -0.4497 | 0.0773 | -5.82 |  |  | 0.01 |
| Period controls                                  | 0.2996  | 0.1198 | 2.50  |  |  | 0.01 |
| Period 2   | 0.3734  | 0.1196 | 3.12  |  |  | 0.01 |
| Period 3   | -2.92   | 0.8607 | -3.39 |  |  | 0.01 |
| Constant   |         |        |       |  |  |      |
| Estimated $R^2$                                  | = .30   |        |       |  |  |      |
| Chi-sq. log likelihood ratio test (significance) | 838.35  | (.001) |       |  |  |      |
| $N = 2,158$                                      |         |        |       |  |  |      |
| Percent in modal category                        | 63%     |        |       |  |  |      |
| Percent predicted correctly                      | 72%     |        |       |  |  |      |
| Percent reduction of error                       | 24%     |        |       |  |  |      |

\*Two-tailed tests of significance levels are used.

\*\*This variable equals the sum of the preceding five death penalty votes.

Institutional arrangements not only shape the character of the bench but also are critical influences on judicial choice, even when predispositions are taken into account. When past behavior is controlled, term length continues to exert a direct effect on judicial behavior. To a lesser extent, ballot type also continues to influence voting directly through interactions with competition and ideology. Contextual forces also are important, both as direct and indirect influences on voting in state supreme courts. In essence, who reviews a death sentence, and where, quite literally can mean the difference between life and death for defendants being sentenced in capital cases.

However, personal, institutional, and contextual forces do not dominate the process of judicial decision making to the exclusion of case-related considerations. With the effects of the political influences held constant, the specific features of the cases have a significant impact on the votes cast by individual justices. When confronted with particular case facts designated explicitly by statute to trigger the assignment of death as a sentence, justices acquiesce.

Clearly, both political and legal forces influence the process of judicial decision making. Discretion is inherent in this process and is exercised predictably according to the judges' preferences and other political calculations, within particular sets of institutional and contextual constraints, including the law relevant to the cases. While we are just beginning to disentangle the influences of these alternative forces on judicial choice, the results of this paper indicate that such avenues of inquiry should be quite fruitful.

We conclude with the usual caveats. This study is of but a single issue and a limited set of courts, within a restricted time frame. We leave investigations of voting on issues other than the death penalty and in other courts, along with more sophisticated modeling to better represent the extraordinary complexity of the judicial calculus, to future endeavors. But surely systematic comparative analysis is fundamental to achieving these goals.

## APPENDIX

### VARIABLE DESCRIPTIONS

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#### Personal Attributes

|                |   |
|----------------|---|
| Party          | 1 If the justice identified is a Democrat<br>0 otherwise  |
| Age            | Age in years of the justice casting the vote  |
| New Member     | 1 if the justice identified joined the court during the period being examined<br>(see period 2 and period 3 definitions in this table)<br>0 otherwise |
| Predisposition | Moving sum of each justice's votes in the past five cases, with each liberal vote coded 0 and each conservative vote coded 1.                         |

#### Contextual Influences

|                |  |
|----------------|--|
| State Ideology | An index of state ideology, with 0 most conservative and 100 most liberal, lagged two years. The measure is computed from annual |
|----------------|--|

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APPENDIX *continued*


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|                          |  |
|--------------------------|--|
| Electoral Competition    | averages of the ADA, ACLU, and COPE scores for each party in a state's congressional delegation. These scores are then weighted by party strength in the state legislatures. The weighted average from these weighted partisan scores is computed for the years 1981 through 1986. |
| Institutional Influences |  |
| Ballot                   | Holbrook and Van Dunk's (1993) measure of state electoral competition, based on district-level outcomes of state legislative races   |
| Term Length              | 1 if the state utilizes either partisan or nonpartisan elections to select supreme court justices (Illinois, Kentucky, Louisiana, North Carolina, Ohio, Texas)<br>0 otherwise (Arizona, California)  |
| Crime Characteristics    | Length of term for supreme court justices, in years  |
| Rape                     | 1 if the capital crime involved sexual assault<br>0 otherwise  |
| Rob                      | 1 if the capital crime involved robbery<br>0 otherwise   |
| Copkill                  | 1 if the capital crime involved killing a police officer<br>0 otherwise  |
| Kidnap                   | 1 if the capital crime involved kidnapping<br>0 otherwise  |
| Victim Characteristics   |  |
| Multiple Victim          | 1 if more than one person was murdered<br>0 otherwise  |
| Female Victim            | 1 if the murder victim was female<br>0 otherwise   |
| Elderly                  | 1 if the murder victim was age 65 or over<br>0 otherwise   |
| Child                    | 1 if the murder victim was 12 years of age or less<br>0 otherwise  |
| Period Controls          |  |
| Period 2                 | 1 if the case was decided in 1985 or 1986<br>0 otherwise   |
| Period 3                 | 1 if the case was decided in 1987 or 1988<br>0 otherwise   |

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