

BACKGROUND AND ENVIRONMENTAL EFFECTS ON
FEDERAL DISTRICT COURT POLICY OUTPUTS

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The people who helped are far too numerous to mention. My debt to them is too great and the friendships involved are far too valuable to risk inadvertantly omitting a name. I would, however, like to dedicate this work to my family and to the memory of John W. Coulter--his life was an eloquent argument for democracy.

ABSTRACT

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This dissertation explores the relationship between federal district judges' backgrounds and their liberal or conservative policy propensities. The 21,142 federal district court opinions involving liberal/conservative questions issued from 1933-1972 serve as the data base. The large number of cases enabled the researcher to control for temporal and spatial differences as well as for whether the opinion stemmed from criminal, class discrimination, freedom expression, labor, or economic regulation cases.

The effect of political party affiliation, appointing president, and length of judicial tenure were tested. None of these background characteristics explained as much variance in judicial liberalism/conservatism as did simple differences among case categories, among circuits, and across time. Generally speaking, political party affiliation was the least powerful predictor of liberal or conservative opinions, although Democrats were slightly more liberal than Republicans. Appointing president was slightly more powerful, with Johnson appointees substantially more liberal than Nixon appointees and somewhat more liberal than judges appointed by other Democratic presidents.

While political party affiliation was not important across the forty year time span, differences between Democrats and Republicans since the inauguration of Richard Nixon and appointment of Warren Burger in 1969 have increased rapidly. Thus, the dissertation concludes by proposing a heuristic model of federal district judge policy propensities organized around change across time, which seeks to identify significant shifts in the relationship between policy propensity and politically relevant background characteristics.

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An Exploration of Variance in Liberal/Conservative Policy Outputs
Among Federal District Judges and Among Federal District Courts

PREFACE

Most serious students of the American judiciary have rejected models of mechanical jurisprudence in which judges methodically apply the law in a neutral, apolitical fashion. The majority of judicial scholars agree that many, if not all, judicial decisions should be viewed as policy outputs which authoritatively allocate values in society, rather than simply as rule interpretations. In authoritatively allocating values, the judiciary interacts with the larger social and political environment; thus, the judicial decision is more political than mechanical, and the individual judge is an important political actor. For example, the role of federal district judges such as Alabama's Frank Johnson in both formulating and implementing desegregation policy has placed these judges in the center of both political and social conflict.* Yet the nature of the relationship between the judicial decision, politically relevant judge characteristics, and larger societal or environmental considerations is now well understood. This is especially true of decisions emanating from single-judge courts of original jurisdiction, such as the federal district courts.

Conscious of these missing links, the research reported here explores the relationships between politically relevant judge characteristics, environmental influences, and the liberal/conservative nature of federal

*For an excellent review of Johnson's role in desegregation and other policy controversies, see Frank M. Johnson, "The Constitution and the Federal District Judge," Texas Law Review (Vol. 54, #5, June 1976), pp. 903-916.

district court decisions. This exploration is based on a larger data and time frame (21,142 federal district court opinions returned between 1933 and 1972) than were earlier studies. These opinions are conceptualized as policy statements; thus, the general question addressed by this dissertation is: What are the effects of politically relevant judge characteristics, and spatial, temporal and environmental differences on federal district court policy outputs?

Chapter one begins with an introduction and justification of the study, which includes a review and critique of earlier work in the area, along with an elaboration of the general questions explored. Next, in chapter two, the research design is presented in greater detail by delineating specific data used and operationalizing the key variables. Chapter two concludes with presentations of specific questions, hypotheses to be tested and methods of data analysis discussed separately for each chapter outline which introduces the remaining substantive chapters of the dissertation.

Substantive findings are reported in chapters three, four, five, and six. Chapters three and four explore the relationship between federal district court judge background characteristics and the liberal/conservative nature of opinions issued by these judges. Chapter five explores liberal/conservative differences among circuits and states, while chapter six explores these same differences across time. Finally, in chapter seven, background, space, and time effects are summarized and a heuristic, factorial model of the relationship between individual judge characteristics, spatial constraints, and temporal constraints is suggested.

CHAPTER ONE

Introduction and Justification of the Study and Critical Review of the Literature

The study outlined here is designed to make an original contribution to the understanding of the American political system and the functioning of the federal judiciary within that system by describing liberal/conservative variance in federal district judges opinions between 1933 and 1972. The study rests on the premise that the federal district courts are political institutions which participate in the authoritative allocation of values in society.¹

In assigning a policy role to the courts, one need not argue that all judicial decisions involve judicial policy-making. Herbert Jacob, for example, makes a distinction between policy-making and norm enforcement, noting that judicial policy decisions are intended to be guideposts for future actions and are usually accompanied by published opinions.² Other public law scholars, however, define the courts' policy role more broadly. Wells and Grossman, for instance, argue that all cases handled by the judiciary, regardless of scope or impact, are problem solving, and therefore policy-making, endeavors:

. . .it makes no sense to say that a policy cannot be made through the application of settled law, for the mere decision to apply that law--or to depart from it--is a policy decision.³

Whether one agrees with Wells and Grossman that all judicial decisions are policy decisions or assumes the more conservative position presented by Jacob, there is general agreement that judicial decisions may allocate values by authoritatively adjudicating disputes and that published judicial opinions may be accurately characterized as public policy

statements.⁴

Accepting the premise that courts are participants in the public policy process raises the question of whether judicial policy decisions in a political system characterized by separation of powers are made in isolation from the larger political and socio-economic environments. Such a question is particularly apt in a complex society such as the United States. Political anthropologists and sociologists point out that the extent to which a society's judicial functions are performed by specialized judicial institutions is largely determined by the degree of concentration of people and differentiation of wealth in that society.⁵ In the United States where both people and resources are highly concentrated and differentiated, the judicial function is highly specialized and performed largely by the local, state, and federal constitutional courts.⁶ Several aspects of constitutional separation of powers in the United States, such as lifetime appointment of federal judges, are designed to promote this specialization and to insulate the federal courts from overt political pressure. Thus, to the casual observer, federal courts may appear isolated from the more political executive and legislative branches of the system. Indeed, respected students of jurisprudence have depicted judges as isolated, mechanical interpreters of laws produced by the more political branches.⁷

Yet, their performance of the judicial function has the ironic effect of placing the courts squarely within the larger political process. As early an observer as Tocqueville noted that, "Scarcely any political question arises in the United States that is not resolved sooner or later into a judicial question."⁸

Early twentieth century students of public law expanded Tocqueville's observations. Noting that different judges reach different decisions, even when applying the same law to similar or identical fact situations, these scholars rejected the nineteenth century view of judges mechanically applying the law. Thus, in 1925, Robert Cushman wrote:

The Supreme Court does not do its work in a vacuum. Its decisions on important constitutional questions can be understood in their full significance only when viewed against the background of history, politics, economics, and personality surrounding them and out of which they grew.⁹

Contemporary political scientists have also explicitly recognized the relationship between the courts and the larger socioeconomic and political environment by conceptualizing the courts as political, policy-making institutions linked to the larger socio-economic and political environments.¹⁰ Judicial policy decisions are characterized as both influenced by and influencing the larger environment.

Of courts in general, James Eisenstein argues that the legal process is an integral part of the political system and that judicial decisions have cumulative effects which extend far beyond their effects on individual litigants.¹¹

Scholars such as Jack Peltason,¹² Richard Richardson and Kenneth Vines,¹³ Thomas Walker¹⁴ and Kenneth Dolbeare¹⁵ have focused on federal district courts in particular and argued persuasively that these courts of original jurisdiction are as politically relevant as their appellate counterparts. Yet, with the important exceptions noted above, it is fair to say that substantially more attention has been devoted to courts at both the federal and state appeals level than to courts of original jurisdiction on either level.

Such oversight cannot be justified by minimizing the importance of courts of original jurisdiction in the policy process. After all, the vast majority of federal litigation is initiated and completed in district courts. In 1975 alone, proceedings were introduced in federal district court.¹⁶ Nor can one argue that federal district courts handle only routine cases with no policy implications. Several scholars have noted the crucial role of the lower federal courts in formulating important social policy. Both Peltason¹⁷ and Jacobs,¹⁸ for example, have carefully delineated the role of the courts in furnishing access to the policy process for civil rights groups and in both formulating and implementing civil rights policy. Those decisions accompanied by a formal opinion are especially likely to have important political and policy implications. As Stephen Early has noted: "Only if he presides at trials of very important issues or public policies is a lower court judge apt to write out in detail the reasons behind his decisions."¹⁹

Given their political and policy importance, the relative paucity of federal district court studies leads one to ask why such an important institution has received so little attention. Richardson and Vines attribute the relative neglect of lower federal courts to five related causes:²⁰

- 1) The early tendency of public law scholars to use legalistic rather than social science frameworks tended to focus attention almost entirely on the Supreme Court.
- 2) Models of judicial decision-making have tended to assume a collegial body of judges. This has diverted attention from lower courts and produced methods of measurement such as bloc

and scalogram analysis inappropriate for the study of district courts.²¹

- 3) The quantity and diversity of decisions creates difficulties in data gathering and analysis.
- 4) The low visibility of most lower court decisions removes an important stimulation to investigate them.
- 5) Compared to the Supreme Court, lower court decisions often lack an air of finality and appear to be indecisive or a transient stage in the judicial process.

The same authors, however, argue that many of these same factors also enhance the potential benefits of lower court analysis:

. . .the great number of lower courts, their widespread and heterogeneous character and the different levels of court organization present an important opportunity for research and analysis. Precisely because of the great diversity in environments, judges, and decisions, there are resources for examining a variety of judicial problems. For that reason, the lower courts embody more opportunities for the analysis of a greater variety of behavioral and decisional problems than does the Supreme Court.²²

In sum, students of public law have rejected the view that judges mechanically apply the law from a dispassionate position of isolation. Decision differences among judges in the face of similar or even identical fact and legal situations have led writers to emphasize the interaction between the judiciary and the larger environment which limits judicial isolation by both subjecting the judiciary to pressures from the larger environment and by enabling the judiciary to exert influence over that environment. Thus, for these scholars, the courts are specialized and formally insulated, but they are neither isolated nor apolitical. However, while the evidence for rejecting 'mechanical

jurisprudence" and conceptualizing the courts as political institutions involved in policy-making is most persuasive and generally accepted, it has been much easier to reject mechanical jurisprudence as the basis of the judicial decision than to indicate the nature of the links between the judicial decision and the larger socioeconomic and political environment. This difficulty has been compounded by the relative neglect of the federal district courts with their rich diversity of cases, regional, and temporal differences.

It is ironic that the greatest void in our understanding of the relationship between the federal courts as policy-making institutions and the larger environment exists at that level which is least insulated from that environment. This dissertation rests on the belief that the important role of the district courts in authoritatively allocating values justifies and even requires that efforts be made to fill this void. It is, therefore, the purpose of this dissertation to explore the effects of individual judge characteristics, regional differences, and temporal differences on the liberal/conservative nature of federal district court policy statements issued between 1933 and 1972. This study will be based on the universe (21,142) of opinions issued during this time period which include a liberal/conservative dimension (operationally defined in Chapter Two). The scope of this study will enable us to make several contributions to the work which has preceded it by replicating earlier work which was based on smaller data sets extended across smaller frames of time and space. Yet, as indicated by the title, this dissertation is largely exploratory nature. The size and the scope of the data base dictate that more questions will be raised than can be answered. Thus, in the final analysis, the primary purpose of this

dissertation is largely hueristic--to explore, describe, and generate hypotheses, and to suggest an agenda for more detailed research into federal district court policy outputs which extends far into the future.

As noted above, this exploration will focus on the effects of variance in judge characteristics, spatial environment, and temporal environment. The more specific questions to be addressed and steps to be taken are presented below in a chapter outline which concludes this chapter and in chapter two. However, before proceeding to more specific questions and strategies, earlier studies of the influences of judge characteristics and the environment on judicial decisions and policy outputs will be critically reviewed.

Literature Review

Literature will be critically reviewed which studies the following effects on the courts in general and federal district courts in particular: 1) Judge Characteristics; 2) Spatial setting; 3) Temporal setting. The purpose of this review is to furnish a background for the substantive questions addressed by this dissertation and to place this study within the larger context of efforts to understand the federal district courts. Both strengths and shortcomings of extant studies are cited as justification for this dissertation.

Descriptions of Judge Characteristics

Since judicial policy decisions and policy statements are issued by judges, the most obvious link between judicial policy and the environment is the individual judge. Thus, in rejecting mechanical jurisprudence and raising the question of what accounts for the

differences in decision propensities among judges faced with similar or even identical fact and legal situations, most have sought to explain this variance in decision propensity by relating it to variance among judges in politically relevant personal characteristics.

Several scholars have demonstrated that judges come from politically active backgrounds and that the selection of federal judges, including federal district judges, is a highly political process. John Schmidhauser published a seminal work in which he identified Supreme Court justices in terms of parental occupation, place of birth, ethnicity, religious affiliation, educational background, pre-judicial occupation, and political party affiliation. Schmidhauser found that virtually all court justices were from upper or upper-middle class, white, Anglo-Saxon, Protestant backgrounds and had attended prestigious Ivy League law schools. Further, most had a personal and family history of organized political activity.²³

While the most striking characteristic of Schmidhauser's set of justices was their background homogeneity, those few justices from humble backgrounds tended to be Democrats. In fact, 28 percent of the justices appointed by Democratic presidents were from humble backgrounds while only nine percent of Republican appointees were from such backgrounds. Moreover, since the publication of Schmidhauser's work in 1960, the complexion of the Court seems to be shifting. For example, in 1968-69, five of the nine justices were from humble backgrounds, while the 1974-75 Court contained three justices from such a background.²⁴

Sheldon Goldman compared Kennedy and Eisenhower appointees to the lower federal courts and found that both came largely from the metropolitan middle class and shared both a strong legal background and a strong

attachment to the political party of their appointing president.²⁵

Eisenhower appointees, however, tended to come from slightly higher socio-economic status backgrounds, to be from Ivy League schools, and to have been associated with larger law firms, which may suggest subtle class differences.²⁶

Various studies of social backgrounds of federal district court judges have concluded that localism is an important federal district judge characteristic and that differences in local environments produce important differences in district judge backgrounds. Localism refers to the tendency for lower court judges to live in and be influenced by the localities in which they preside. Such localism is virtually guaranteed by the organization of federal courts along state boundaries and the exercise of senatorial patronage and courtesy.

Kenneth Dolbeare, for instance, found that federal district court judges in urban areas tended to be elderly, localized men whose origins legal education, and office holding experience were centered around the cities in which their courtrooms were located.²⁷ Dolbeare's findings largely confirmed those of Kenneth Vines in an earlier study of federal District Court judges in the South.²⁸

Richardson and Vines studied the backgrounds of lower court judges, paying particular attention to the interaction between party affiliation and localism.²⁹ While over 90 percent of the judges were from the party of the appointing president, the combination of localism and regional intra-party differences insured ideological diversity among appointees of the same party and even among appointees of the same president.³⁰

In sum, both inter-party and intra-party cleavages exist. The

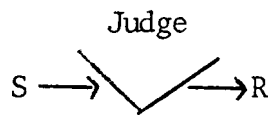
interaction of localism and partisan influences on lower court judge selection is a natural outgrowth of the selection process. A detailed description of this process is beyond the scope or purpose of this literature review; however, appointment by the president, confirmation by the Senate and the workings of senatorial courtesy combine with the organization of the federal district court structure along state boundaries³¹ to produce a process that is at once highly political and highly local in character. Furthermore, studies indicate that ideological considerations play an important part as senators and presidents vie to place judges who share their policy propensities on the federal bench.³²

The fairly extensive efforts to describe the characteristics of judges has led scholars to ask what, if any, influence individual judges' personal characteristics have on judges' propensities to return liberal or conservative decisions.

Judge Characteristics-Attitudes

Students of judicial behavior have identified differences among judges in their propensity to return liberal or conservative decisions and have sought to relate these differences to differences in politically relevant attitudes or values among judges. Borrowing from behavioral psychology, these writers have conceptualized the larger socio-economic environment as the source of stimuli (cases) to which the organism (judge) must respond, with individual judges values viewed as variables which intervene between the stimulus (case) and response (decision). Thus, psychological characteristics are viewed as influenced by the larger environment and, in turn, influencing the liberal/conservative

nature of the judicial decision and its policy content.



Students of the U.S. Supreme Court have argued persuasively that a link between a judge's politically-relevant values and attitudes and the liberal/conservative nature of that judge's decisions can be inferred on collegial courts by comparing that judge's votes with those of his colleagues who have heard the same cases. Politically relevant attitudes and values of judges, including their perceptions of the judicial role, have been inferred from their decisions³³ or, less often, determined by off-the-bench records³⁴ and linked to the judicial decision.

Such concentration on single collegial courts offers a methodological advantage to those comparing judges in that all judges have heard the same cases; however, as noted by Richardson and Vines,³⁵ this concentration has also contributed to several methodological and substantive problems. For example, the overemphasis on single collegial courts has produced descriptive techniques, such as scalogram analysis, which are inappropriate to the study of single judges across space³⁶ and, therefore, federal district courts. These techniques have, in turn, been used to infer explanatory variables, such as values and attitudes, which cannot be inferred from the study of federal district judges sitting alone. Finally, such studies are limited to small samples or populations by the small number of judges seated on any collegial court. Partially because of these methodological difficulties, several scholars have also sought to identify a link between judges' attributes and the individual judge's

decisions.

Judge Characteristics-The Link to the Judicial Decision

A link between social background attributes such as age, race, sex, or religion and the judicial decision has been difficult to establish, partially because of the largely homogeneous backgrounds represented on the federal bench. Nor has variance in legal background been convincingly linked to variance in liberal propensity.

Stuart Nagel did, however, find a slight tendency for judges who were former prosecutors, and or Protestants, to favor the state in criminal cases.³⁷ Likewise, Charles Lamb has concluded that justices on the Court of Appeals for the District of Columbia Circuit show a tendency toward increasing conservatism as their age and experience on the bench increase.³⁸ Schmidhauser, however, was unable to demonstrate any relationship between judicial experience and a hypothesized propensity to follow precedent.³⁹

The strongest attribute link has been between judges' politically relevant background characteristics and the liberal or conservative nature of their decisions. Given the political backgrounds of most judges and the political nature of the judicial selection process, it is reasonable that scholars rejecting mechanical jurisprudence and either unable or unwilling to infer liberal or conservative judicial values from judicial decisions would focus on politically relevant background characteristics. And, given the role of patronage in the selection process, it is not surprising that judges' political party affiliations have received the bulk of attention from these scholars.

Stuart Nagel examined cases heard in 1955 by a sample of judges

from the U.S. Supreme Court and state courts of last resort (N=298 judges). He found that Democrats were significantly more likely than Republicans seated on the same court to favor the defense in criminal cases, the government in tax and regulation cases, employees and tenants in landlord or employer disputes, the consumer in sale-of-goods cases, and the injured party in motor vehicle accident cases.⁴⁰ Nagel designated these as the more liberal positions and concluded that democrats tended to be more liberal when faced with the same case than did Republican judges.⁴¹

Glendon Schubert and Sidney Ulmer reached similar conclusions in separate studies of the Michigan Supreme Court. Schubert found that Democrats were more favorably inclined towards workmen's compensation claims,⁴² while Ulmer found Democrats more sensitive also to the claims of the injured and the unemployed.⁴³

Sheldon Goldman examined the 2,510 cases heard by the U.S. Court of Appeals between 1961-1964 and found that Democratic judges had significantly higher liberalism scores on economic issues. However, he found no consistent inter-party differences in criminal or civil liberties cases.⁴⁴ Goldman cited his own findings as less than impressive, concluding that "the background variables tested are not directly associated with uniform tendencies in judicial behavior."⁴⁵

However, in a more recent study of cases heard between 1965-1971, Goldman changed his research design slightly and found background characteristics to be more salient.⁴⁶ In the second study, both party and age emerged as important predictors of liberal/conservative decision-

making on the Courts of Appeals across a wide spectrum of issues, with Democrats tending to be more liberal.⁴⁷ This was especially true on economic issues. Age was most important on political liberalism issues with younger judges tending to be more liberal. Furthermore, controlling for region (the South) increased the amount of liberalism variance accounted for by both independent variables.⁴⁸ Goldman concluded cautiously that "these findings lend some slight encouragement to backgrounds-behavior research at the aggregate level."⁴⁹

Thus, studies of appellate courts indicate a weak but consistent relationship between judicial background and liberal judicial propensity in certain policy areas. Even the strongest indicator-party affiliation is acknowledged with caution. This skepticism seems to be justified when we turn our attention to the trial court level.

The Link Between Background and Judicial Decision-Making-Federal District Courts

Work by Kenneth Dolbeare has indicated that political party identification and other background factors are insignificant predictors of judicial decisions in urban state trial courts.⁵⁰ Dolbeare has also found party affiliation to have no predictive value in federal district court cases involving challenges to urban civil rights, criminal law, urban renewal, or tax and regulatory policy.⁵¹ However, Dolbeare did find several links between background and decision propensities among judges seated on the federal district bench in twenty urban areas. He found that 1) older judges tended to endorse local police practices; 2) Kennedy appointees tended to be more supportive of local civil rights and criminal practices than did Roosevelt, Truman, Eisenhower or Johnson

appointees; and 3) judges without prior state-court experience were more than twice as likely to require policy changes than were there with judicial experience.⁵² Dolbeare identified state court experience with ties to the local community and concluded that the variable which best explains decision-making patterns is localism, as evidenced by state office experience, and that party affiliation had little or no predictive value.⁵³ Dolbeare's findings are not surprising, given the influence of localism on the federal district judge selection process.

A more recent study of partisan influences on federal district court decisions was conducted by Thomas Walker.⁵⁴ Walker drew a simple random sample of 1177 civil liberties opinions issued between 1963-68 from the Federal Supplement. These opinions involved 193 judges. Using the phi measure of association, Walker, like Dolbeare, found no relationship between the party affiliation of the opinion writer and the liberal/conservative nature of the opinion in civil liberties cases, even under controls for region.⁵⁵ However, it should be noted that Walker's regional controls were quite crude, with division into only North, South, East, and West, rather than into regions defined by policy-related boundaries such as states or judicial circuits.

Dolbeare's findings are also consistent with those of Kenneth Vines in his study of cases involving Black civil rights in the South.⁵⁶ Vines asked whether judges' civil rights opinions were molded by their background and social and political environments. He reached two major conclusions:

- 1) While almost all judges were tied to the region by birth, legal training and law practice, "segregationist judges were more

closely linked to the Southern social system, as measured by religious affiliation, and to the political structure as measured by their more frequent experience in state government."⁵⁷

- 2) The higher the percentage of Blacks in a district, the greater the tendency of judges in that district to reach segregationist civil rights decisions.⁵⁸

Vines and Richardson also studied the effects of localism and party on Labor and Civil Liberties decisions by district judges in the Third, Fifth, and Eighth Circuits.⁵⁹ From a sample based on all civil liberties and labor decisions returned from these districts between 1956-61 (840) cases, Richardson and Vines were able to conclude:

1. The percentage of Blacks in a district was negatively related to the percentage of pro-Black decisions from that district.⁶⁰
2. Variance in pro-labor and pro-civil rights propensity occurred among regions as well as among judges within the same circuit or district.⁶¹
3. Democrats were slightly more favorable to labor, while Republicans were slightly more libertarian in civil liberties cases.⁶²

Thus, the effects of party were ambivalent, with a strong suggestion of interaction between the effects of party and localism. However, the authors were not able to control for region in measuring differences between Democrats and Republicans.

In sum, in the limited number of federal district court studies to date, political party affiliation has proven less valuable than localism in explaining the policy propensities of federal district court judges. There is also evidence that localism may be a function of judicial

training as well as judicial background. For example, research indicates that the socialization of federal district court judges also has a strong local flavor. Robert Carp and Russell Wheeler found that new federal district judges were introduced to the norms surrounding their position primarily through informal contact with senior judges in their district.⁶³ On the other hand, neither Carp and Wheeler nor Beverly Cook⁶⁴ attribute significant influence to the new judge seminars instituted by the Federal Judicial Conference under the leadership of Chief Justice Burger.

Space Effects

The findings of Carp and Wheeler, Richardson and Vines, and Dolbeare all suggest that important district court policy variance may occur among regions and that the region, rather than the judge may be the proper unit of analysis. Indeed, recent work in the field of judicial administration further suggests that variance in judicial outputs at the district court level may be at least partially a function of variance among larger, spatially defined units, such as districts, rather than among judges.⁶⁵ For example, recent studies of disposition rates in federal district courts indicate that disposition rates in civil cases may vary more among jurisdictions than among judges within the same jurisdictions.⁶⁶ Further, administrative considerations, such as caseload, seem to be more important than individual considerations such as among-judge personality differences.⁶⁷ Thus, recent research in administrative outputs supplements earlier studies of authoritative outputs in suggesting that variance in administrative outputs is very much a function of the spatial environment in which the administrative unit is located.

In locating important among-jurisdiction variance in administrative policy, the judicial administration studies reviewed above suggest support for earlier conclusions that important variance in authoritative outputs and policy propensities also occurs among jurisdictions. One would intuitively expect judges within the same jurisdiction to seek a certain consistency in their rulings. Likewise, one might expect the circuit and/or state in which a judge sits to influence his policy propensities. The formal influence of the Circuit Court of Appeals and the threat of reversal and the informal influence of environmental factors common to the circuit have been cited as potential influences.⁶⁸ Robert Carp has studied communication among trial court judges in the Eighth Circuit and found that federal trial judges view the circuit as a semi-closed system where there is considerable interaction within the circuit and almost no interaction with members of other circuits.⁶⁹ Carp also found that interaction was most intense and frequent among justices within the same state.⁷⁰ In his examination of the relationship between party affiliation and judicial liberalism on the U.S. Courts of Appeals, Goldman controlled for circuit found a stronger association when the Fourth and Fifth circuits were excluded.

Examination of among-state differences and controls for the effects of state on party influences are rare, possibly because procedural and statutory differences among states make such comparisons difficult. Adamany⁷² attempted unsuccessfully to replicate Schubert's⁷³ and Ulmer's⁷⁴ Michigan Supreme Court findings that Democratic Party Affiliation was associated with liberal economic decisions in his study of the Wisconsin Supreme Court. Beiser's study of the New York State Court of

Appeals indicated that party affiliation was less salient in New York than in Michigan, but more salient than in Wisconsin.⁷⁵

Given the evidence of within-circuit and within-state consistency and the role of state considerations in selecting federal district judges, one would expect spatial differences defined by circuit and state boundaries to play a major role in the study of federal district courts. However, neither the effects of among-state nor among-circuit differences have been systematically examined at the federal district court level. Further, the effects of party on liberal policy propensity have not been tested under controls for circuit and state.

Time Effects

The environment in which courts are located is a function of the time as well as the space in which they are located. The limited work done by students of public policy indicates that temporal analysis may contribute substantially to increased understanding of fluctuations in public policy.⁷⁶ Attention to variance across time alerts one to general time effects on the environment and to variance across time. Furthermore, it controls for more immediate effects, such as the policy propensities of the Supreme Court and policy changes related to changes in Court personnel. Yet, political scientists in general and public law scholars in particular have displayed a disturbing willingness to generalize findings across time from cross-sectional studies.⁷⁷

While recognition of time effects has been uncommon among public law scholars, there have been exceptions at the appellate level. A host of writers have analyzed Supreme Court shifts in policy propensities from one era to the next.⁷⁸ Funston studied the Supreme Court's exercise

of judicial review over time more systematically and found that the policy propensities on the Court fluctuated over time in accordance with the preferences of the national political majority.⁷⁹ Goldman has studied the Courts of Appeals at two points in time and found that party affiliation was more salient in the 1965-1971 period than it had been in 1961-1964.⁸⁰ Finally, there have been replications of earlier work such as Malcom Feely's recent replication of Ulmer's Michigan work which largely substantiated the continuing tendency of democratic judges to return liberal economic decisions.⁸¹

At the federal district court level, Hall compared the social, political (party) and legal/judicial characteristics of federal district judges appointed during the civil war era with 20th century judges.⁸² The backgrounds were generally similar; however, the pre-civil war judges come from a greater variety of backgrounds, including non-legal secondary occupations, and were much more likely to have pursued elective office. Prior judicial service is common in both eras. Thus, the move to "professionalization," as exemplified by the influence of ABA and the Department of Justice,⁸³ in the recruitment process does not appear to have produced more experienced judges, but has reduced office seeking experience. This suggests that pre civil war federal judges may have been even more rooted in local politics than are today's federal judges and that the influence of localism may vary over time.

Yet, no study of federal district courts has studied differences among years in judicial policy propensities or controlled for time in testing the association between background characteristics and liberal/conservative judicial propensities. Cognizance of variance across time

may be particularly important in the study of lower federal courts. Even the most ardent behavioralist would not reject completely the impact of higher court policy propensities and stare decisis on the behavior of lower court judges. Nor would the most ardent traditionalist argue that the Supreme Court does not occasionally issue policy statements representing substantial shifts in liberal or conservative propensity. Thus, to the extent that appellate court policy shifts over time, one would expect a certain amount of trial court variance to occur across time rather than among judges or even among spatially defined jurisdictional units. At the very least, one would expect the nature of the link between background characteristics and judicial policy propensity to vary over time.

In sum, public law scholarship has produced a body of literature which argues that a fairly consistent but weak relationship exists between among-judge variance in authoritative decisions and among-judge variance in personal characteristics--especially party affiliation. Yet, for all the effort expended, scholars have not been very successful in explaining liberal/conservative variance in judicial policy outputs. They have been particularly unsuccessful in the study of the interaction between judicial backgrounds, local effects, and temporal effects on judges at the federal district court level. In this writer's opinion, a more complete understanding of this relationship has been hindered by conceptual and methodological limitations in public law research.

A major area of weakness lies in the conceptual treatment of the most important politically relevant judicial background characteristic--political party affiliation. As noted above, political party affiliation

is one of the few fairly consistent sources of attribute variance among judges and has shown promise as a predictor of the liberal/conservative nature of judicial decisions. Yet, the conceptual treatment of party affiliation as an explanatory variable has been overly simplistic and has failed to control for the localized, non-ideological nature of American political parties.⁸⁴ Political party as a predictive variable is severely limited in the American context unless one accounts for temporal and spatial differences. To be a Democrat or a Republican simply means different things at different times and in different areas.⁸⁵ One should not be surprised to find that federal judges acceptable to Senator Eastland in Mississippi may rule quite differently in civil rights cases than would those acceptable to Senator McGovern in South Dakota.

The problems created by variance in the meaning of party affiliation across time and space are accentuated by the largely non-ideological nature of American political parties. Party affiliation simply does not carry the same ideological and policy connotation as would be found in a strong party system.⁸⁶ United States parties more closely approximate temporary, pragmatic electoral coalitions than ideologically consistent unities and, as such, are only weakly and inconsistently linked with public policy.⁸⁷ Thus, given the non-ideological, constituency orientation of American parties, one cannot expect judges' party affiliations to predict their policy propensities across a broad spectrum of issues.

Even though being a Democrat or a Republican in the United States does not define an ideology and cannot be expected to predict one's

position on a broad spectrum of issues, the possibility remains that party affiliation may be an important predictor of judges' policy propensities in certain types of cases. The findings of Nagel,⁸⁸ Schubert,⁸⁹ Goldman,⁹⁰ and others at appellate levels suggest that as yet undertermined party policy linkages may exist for specific case categories at the federal district court level. In the Congressional setting, studies parallel Goldman's finding that party affiliation is a much better predictor of the vote on economic questions than on civil rights questions.⁹¹

It is interesting to note that studies of the policy propensities of political actors outside the judiciary indicate that such propensities may vary across time as well as across issues. For example, the effects of such politically relevant background variables as party affiliation on the votes of Congressmen has varied over time, with party voting most prevalent in the wake of realigning elections.⁹²

In addition to the conceptual and substantive shortcomings outlined, methodological shortcomings have also hindered the search for links between party affiliation and judicial policy propensities.

Methodologically, the search for a link between political party affiliation and judicial policy propensities has been handicapped by a tendency for researchers to generalize too freely to a population of judges from data based on opinions. There are two problems with generalizing from data based on opinions to the decision propensities of the population of federal district judges. First, there is no evidence that cases which culminate in opinions are typical of federal district court cases. Several authors cited above argue that they are

not. Second, as Richardson and Vines found, a minority of judges issue a majority of opinions and there is a real possibility that some federal district court judges never issue formal opinions. Thus, in studies which do not aggregate opinions by opinion writer even conclusions concerning opinion writers may be misleading unless each judge returns an equal number of opinions, which is most unlikely on non-collegial benches. For example, a few conservative Democrats who return a large number of conservative opinions might lead the researcher focusing on the opinion as the unit of analysis to generalize this conservatism to his set of judges or to federal district court judges in general. A propensity for most Democrats to return liberal decisions or issue liberal opinions might be obscured by the fact that they had returned a small number of opinions.

In sum, understanding the effects of among-judge variance on the link between the environment and judicial policy has been handicapped by a lack of concern for temporal and spatial variance and by associated methodological shortcomings, such as focusing almost exclusively on the case rather than the judge as the unit of analysis. At least two potentially important dimensions of variance remain largely unexplored--i.e., no systematic attempt has been made to explore variance in liberal/conservative propensities among circuits and states or across years.

The research on which this dissertation is based is at least partially a response to those problems discussed above which have hindered the search for better understanding of the sources and correlates of variance in judicial policy propensities. First, it builds on existing research to further clarify the link between politically

relevant judge background characteristics and the liberal/conservative nature of federal district court policy outputs for all cases and for specific categories of cases. Next, this research explores liberal/conservative differences in judicial policy outputs over time and among spatially defined jurisdictions. Finally, we reexamine the relationship between policy propensity and politically relevant background characteristics by focusing on the judge as the unit of analysis under controls for temporal and spatial variance for all cases and for specific categories of cases.

In short, this dissertation applies Sheldon Goldman's call for further study of "the party variable" and other background characteristics while taking into account "the regional variable" and the "time period"⁹³ to the study of federal district courts. To do this, all opinions believed to involve an economic or civil liberal/conservative dimension published between 1933-1972 (N=21, 142) are analyzed and used to explore the relationship between backgrounds, region, and time. The details of data collection and analysis are presented in chapter two; however, two limitations presented by this data should be noted in this introduction:

1) First, the spatial and temporal magnitude of this data set are consistent with the study's heuristic purpose and exploratory nature. They promote the discovery of interesting relationships and the generation of interesting questions. At the same time, the scope of the study precludes detailed investigation of many interesting discoveries and relegates detailed answers to future studies of a more specific focus.

2) Second, by using opinions as the primary data base, one's ability to generalize the relationships discovered here to all federal district court decisions is circumscribed. That is to say, no argument is made that these opinions represent a random sample from which one can generalize to the population of federal district court decisions. On the other hand, there is no evidence that relationships revealed by the study of these opinions are atypical; thus, the findings will suggest relationships to be tested for unpublished federal district court decisions. Perhaps more importantly, the justification for the study of federal district courts lies in their important policy function--i.e., decisions which determine the authoritative allocation of values. Opinions differ from other decisions in that they are formal, codified policy statements; thus, given the purpose of this study, opinions are a more appropriate data base than decisions. Therefore, the focus is on the liberal/conservative nature of federal district court policy outputs and our data base is the universe of relevant federal district court policy statements for a 30-year period. The following chapter will describe the data used to examine these questions, operationalization of variables, hypotheses to be tested, and methods of data analysis to be utilized.

¹The equating of authoritative policy functions with political institutions is, of course, adapted from David Easton's seminal work. See, A Framework for Political Analysis (Englewood Cliffs, N.J.: Prentice-Hall, 1965) and A Systems Analysis of Political Life (New York: Wiley and Sons, 1965).

²Herbert Jacob, Justice in America, 2nd Edition (Boston: Little, Brown and Co., 1972), p. 31.

³Richard S. Wells and Joel B. Grossman, "The Concept of Judicial Policy-Making," Journal of Public Law, XV, No. 2 (1966) pp. 286-307.

⁴See James E. Anderson, Public Policy-Making (New York: Praeger Publishers, 1975). Anderson differentiates policy statements from policy implementation, noting that policy as stated and policy as implemented may differ substantially.

⁵For an excellent recent summary and theoretical statement of this position, see Donald Black, The Behavior of Law (New York: Academic Press, 1977). See also, Kenneth Prewitt and Alan Stone, The Ruling Elites: Elite Theory, Power, and American Democracy (New York: Harper and Row, 1973).

⁶It should be noted, however, that important adjudication also takes place within other judicial structures, such as regulatory bodies.

⁷See, for example, C. Herman Pritchett's review of this tendency in "The Development of Judicial Research," in Frontiers of Judicial Research, Joel Grossman and Joseph Tanenhaus (eds.) (New York: John Wiley and Sons, 1969), pp. 27-42.

⁸Quoted in Jack Peltason, Federal Courts in the Political Process (New York: Random House, 1955), p. 1.

⁹Robert E. Cushman, Leading Constitutional Decisions (New York: F.S. Crofts Co., 1925) preface.

¹⁰See Peltason, op. cit., Glendon Schubert, Judicial Policy-Making (Glenview, Ill.: Sco-t, Foresman and Co., 1965); James Eisenstein, Politics and the Legal Process (New York: Harper and Row, 1973). For a view which diminishes the independence of Supreme Court policy-making see Robert Dahl, "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker," Journal of Public Law, 6 (all, 1957) pp. 279-295. More recently, see Richard Funston, "The Supreme Court and Critical Elections," American Political Science Review (Sept., 1975), pp. 795-811.

¹¹Eisenstein, op. cit., p. 5.

¹²Peltason, op. cit. see also his Fifty Eight Lonely Men: Southern Judges and School Desegregation (New York: Harcourt, Brace, Jovanovich, 1961), re the federal district courts role in implementing desegregation in the South.

¹³Richard J. Richardson and Kenneth N. Vines, The Politics of Federal Courts (Boston: Little Brown and Company, 1970).

¹⁴Thomas Walker, "A Note Concerning Partisan Influences on Trial Judge Decision-Making," Law and Society Review, Vol. 6, May, 1972, pp. 645-9.

¹⁵Kenneth M. Dolbeare, "The Federal District Courts and Urban Public Policy: An Exploratory Study" in Frontiers, op. cit., pp. 373-404.

¹⁶Henry J. Abraham, The Judicial Process: An Introductory Analysis of the Courts of The United States, England, and France (New York: Oxford University Press, 1975), p. 159.

¹⁷Fifty Eight Lonely Men, op. cit.

¹⁸Herbert Jacob, "The Courts as Political Agencies, An Historical Analysis," Tulane Studies in Political Science, (New Orleans, 1962), p. 9-50.

¹⁹Stephen T. Early, Jr., Constitutional Courts of the U.S. (Totowa, N.J.: Littlefield, Adams and Co., 1977), p. 52.

²⁰Richardson and Vines, pp. 4-7.

²¹For a summary of these analytic techniques and their application see Murphy and Joseph Tanenhaus, The Study of Public Law (New York: Random House, 1970), pp.

²²Richardson and Vines, p. 170.

²³John Schmidhauser, The Supreme Court: Its Politics, Personalities and Procedures (New York: Holt, Rinehart and Winston, 1960).

²⁴Sheldon Goldman and Thomas P. Jahnige, The Federal Courts As Political System, 2nd edition (New York: Harper and Row Publishers, 1976), p. 67.

²⁵Sheldon Goldman, "Characteristics of Eisenhower and Kennedy Appointees to the Lower Federal Courts," Western Political Quarterly (1965), pp. 755-762.

²⁶Ibid, p. 758.

²⁷Dolbeare, p. 386.

²⁸Kenneth M. Vines, "Federal District Judges and Race Relations Cases in the South," Journal of Politics (1964), pp. 337-57.

²⁹Richardson and Vines, op. cit.

³⁰Ibid. For example, Hoover and Taft were forced to appoint Democrats in the South.

³¹See Richardson and Vines; also Harold W. Chase, Federal Judges: The Appointing Process (Minneapolis: University of Minnesota Press, 1972); Joel B. Grossman, Lawyers and Judges (New York: Wiley, 1965). See Abraham, op. cit. for a detailed account of federal court organization.

³²Richard Nixon, John Kennedy/Lyndon Johnson appear to have been especially attentive to the appointment of federal district judges in general and to ideological considerations in particular. See Harold V. Chase, op. cit.; See also Donald D. Jackson, Judges (New York: Atheneum, 1974); Victor S. Navasky, Kennedy Justice (New York: Atheneum, 1971).

³³The body of literature is voluminous. Among the most important are C. Herman Pritchett's groundbreaking work, The Roosevelt Court: A Study in Judicial Politics and Values, 1937-1947 (New York: Macmillan, 1948); Glendon Schubert, Quantitative Analysis of Judicial Behavior (New York: Free Press, 1959); Schubert, The Judicial Mind: Attitudes and Ideologies of Supreme Court Justices, 1946/1963 (Chicago: Northwestern University Press, 1965); Schubert, The Judicial Mind Revisited: Psychometric Analysis of Supreme Court Ideology (New York: Oxford University Press, 1974). For an excellent review of this literature, see Murphy and Tanenhaus, op. cit. Murphy and Tanenhaus offer insight for criticisms of the circularity inherent in inferring values from decisions.

³⁴See, for example, Alpheus Mason, William Howard Taft: Chief Justice (New York: Simon and Schuster, 1964). For a review of this literature, see Charles H. Sheldon, The American Judicial Process: Models and Approaches (New York: Dodd, Mead & Company, 1974).

³⁵Richardson and Vines, p. 172.

³⁶For a review of these techniques, see Murphy and Tanenhaus, op. cit.

³⁷Stuart S. Nagel, "Backgrounds and Criminal Cases," Journal of Criminal Law, Criminology, and Police Science, Vol. 53, 1962, pp. 333-9.

³⁸Charles M. Lamb, "Exploring Conservatism of Federal Appeals Court Judges," Indiana Law Journal, Vol. 51, #2, pp. 256-74.

³⁹John R. Schmidhauser, "Stare Decisis, Dissent, and the Background of the Justices of the Supreme Court of the United States," University of Toronto Law Journal, XIV (1962), 194-212.

⁴⁰S. Nagel, "Political Party Affiliation and Judges' Decisions," American Political Science Review, Vol. 55, (1961) pp. 843-5.

⁴¹Ibid, p. 845.

⁴²G. Schubert in Quantitative Analysis of Judicial Behavior, pp. 129-42.

⁴³Sidney Ulmer, "The Political Party Variable in the Michigan Supreme Court," Journal of Public Law, Vol. 11, 1962, pp. 352-62.

⁴⁴Sheldon Goldman, "Voting Behavior on the United States Courts of Appeals, 1961-1964," American Political Science Review, Vol. 60, June, 1966), pp. 370-85.

⁴⁵Ibid, p. 385.

⁴⁶Goldman, "Voting Behavior on the United States Courts of Appeals Revisited," American Political Science Review, Vol. 69, 1975, pp. 491-506. Goldman changed his design by limiting consideration to non-unanimous cases and by using more sophisticated multivariate methodology.

⁴⁷Ibid, p. 505.

⁴⁸Ibid.

⁴⁹Ibid.

⁵⁰Kenneth M. Dolbeare, Trial Courts in Urban Politics: State Court Policy Impact and Functions in a Local Political System (New York: John Wiley and Sons, 1967).

⁵¹Dolbeare, "The Federal District Courts and Urban Public Policy: An Exploratory Study (1960-1967)," in Grossman and Tanenhaus (eds.) Frontiers, op. cit., pp. 373-404.

⁵²Ibid, pp. 386-8.

⁵³Ibid, p. 395. It should be noted that Dolbeare's choice of those issues immediately effecting local federal/local relations may have biased his findings.

⁵⁴Thomas Walter^k, "A Note Concerning Partisan Influences on Trial Judge Decision-Making," Law and Society Review, Vol. 6, May, 1972, pp. 645-9.

⁵⁵Ibid.

⁵⁶Kenneth N. Vines, "Federal District Judges and Race Relations in the South," Journal of Politics, 1964, pp. 337-57. Also, Robert Steamer, "The Role of Federal District Courts in the Segregation Controversy," Journal of Politics, 1962, pp. 417-38.

⁵⁷Vines, p. 351.

⁵⁸Vines, p. 346.

⁵⁹Richardson and Vines, op. cit.

⁶⁰Ibid, p. 96. It should be noted that districts in these circuits with a high black population percentage tended to be in the South (Fifth District).

⁶¹Ibid, p. 103.

⁶²Ibid, p. 105. Here, again, the high percentage of civil rights cases heard in the largely Democratic Fifth Circuit should be noted.

⁶³Robert A. Carp and Russell Wheeler, "Sink or Swim: The Socialization of A Federal District Judge," Journal of Public Law, Vol. 21, 1972, p. 359.

⁶⁴Beverly B. Cook, "Socialization of New Federal Court Judges: Impact on District Court Business," Washington University Law Quarterly, #21, Spring, 1971, pp. 253-78.

⁶⁵In general, see Russell Wheeler and Harold R. Whitcomb (eds.), Judicial Administration: Text and Readings (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1977).

⁶⁶Steven Flanders, "Judicial Disposition Rates: The Local Environment, the Process, or the Person," paper presented at the 1975 Annual

meeting of the American Political Science Association, San Francisco, Sept. 3, 1975.

⁶⁷ Ibid; also, David Neubauer, "Case Management in Three Federal District Courts: An Organizational Perspective," Paper presented to Conference on the Application of Organization Theory to Trial Courts, Center for Advanced Study in the Behavioral Sciences, Palo Alto, California, Aug. 22-24, 1975.

⁶⁸ Eisenstein, Politics and the Legal Process, p. 146.

⁶⁹ Robert A. Carp, "The Scope and Function of Intra-Circuit Judicial Communication: The Case of the Eighth Circuit," Law and Society Review #6, Feb. 72, p. 407.

⁷⁰ Ibid.

⁷¹ Goldman, 1975, pp. 496-504.

⁷² David W. Adamany, "The Party Variable in Judges' Voting: Conceptual Notes and a Case Study," American Political Science Review, LXII, 1969, pp. 57-73.

⁷³ Schubert, op. cit.

⁷⁴ Ulmer, op. cit.

⁷⁵ Edward N. Beiser and Jonathan J. Silberman, "The Political Party Variable: Workman's Compensation Cases in the New York Court of Appeals," Polity, V. 3, Summer, 1971, pp. 521-31.

⁷⁶ See especially Virginia Gray, "Models of Comparative State Politics: A Comparison of Cross-Sectional and Time Series Analysis," American Journal of Political Science, #20, May, 1976, pp. 235-57. Also, Raymond Boudon, Education, Opportunity and Social Inequality (New York: Wiley, 1974); For a methodological introduction to time series analysis and selected examples of time series studies, see S. Chatfield, The Analysis of Time Series: Theory and Practice (New York: John Wiley and Sons, 1975).

⁷⁷ Epitomized of course by Nagel's single year (1955) cross section. Even studies which cover wider time periods (Goldman, 1975, for example) treat their time period as a cross section rather than examining variance across time.

⁷⁸ See Arnold Paul, Conservative Crisis and Rule of Law: Attitudes of Bar and Bench, 1887-1895 (Ithaca: Cornell University Press, 1960). Also, G. Schubert, Judicial Policy Making, op. cit.

⁷⁹ Richard Funston, "The Supreme Court and Critical Elections," American Political Science Review, #69, Sept. 1975, pp. 795-811.

⁸⁰ Goldman, 1975.

⁸¹ Malcom M. Feeley, "Another Look at the Party Variable in Judicial Decision-Making: An Analysis of the Michigan Supreme Court," Polity, Vol. 4, Fall, 1971, pp. 91-104. It should be noted that Feeley's measurement methods differed somewhat from Ulmers.

⁸² Kermit L. Hall, "Social Backgrounds and Judicial Recruitment: A Nineteenth Century Perspective on the Lower Federal Judiciary," Western Political Quarterly, Vol. 29, June, 1976, pp. 243-57.

⁸³ Joel Grossman, The Politics of Judicial Selection (New York: John Wiley and Sons, 1965). However, Goldman and Johnige, op. cit. argue that the selection process was more politicized than ever under former President Nixon. He made judicial selection part of his "law and order" campaign and gave ideological considerations high priority.

⁸⁴ See Frank J. Sarouf, Party Politics in America (Boston: Little, Brown and Company, 1976). Theodore Lewi, "Toward Functionalism in Political Science: The Case of Innovation in Party Systems," American Political Science Review, LVII (1963), pp. 570-583.

⁸⁵ Ibid; also see Walter D. Burnham, Critical Elections and the Main-springs of American Politics (New York: Norton, 1970).

⁸⁶ In particular, see Lowi, op. cit. For an analysis of the recent decline of party saliency, see W.D. Burnham, "The End of American Party Politics," Transaction (Dec., 1969).

⁸⁷ Ibid.

⁸⁸ Nagel, op. cit.

⁸⁹ Schubert, op. cit.

⁹⁰ Goldman, 1975.

⁹¹ For a summary of the link between party affiliation and the Congressional vote, see Malcom Jewell and Samuel Patterson, The Legislative Process in the United States (New York: Random House, 1976). Most recently, see Barbara D. Sinclair, "Who Wins in the House of Representatives: The Effect of Declining Party Cohesion on Policy Outputs, 1959-1970," Social Science Quarterly, Vol. 58, #1, June, 1977, pp. 121-128.

⁹²See David Brady, "Inter-Party Competition and Voting in a Competitive Era," American Political Science Review, March, 1973.

⁹³Goldman, 1975, p. 505.

CHAPTER TWO

Methodology

Chapter two consists of a discussion of the data and operationalization of variables needed to undertake this study, followed by an outline of the questions, hypotheses and methods of data analysis for each chapter.

Data

The primary data source for this research is the universe of 21,142 federal district court opinions published in the Federal Supplement between 1933 and 1972 which involve questions of economic or civil liberalism.¹ The cases were divided into the following case categories and sub-categories, which are defined more explicitly in Appendix A.

Criminal Procedure

- (1) habeas corpus - U.S.
- (2) habeas corpus - state
- (3) motions made immediately before, during, or after trial
- (4) contempt of court
- (5) conviction or non-conviction of a criminal offense

Class Discrimination

- (6) alien petitions
- (7) Indian rights and law
- (8) voting cases
- (9) racial minority discrimination (includes petitions by black union members)
- (10) U.S. Civil Rights Act cases (not including cases of racial discrimination)
- (11) military exclusion cases

Freedom of Expression

- (12) freedom of speech
- (13) freedom of religion (includes conscientious objector cases)

Labor Relations

- (14) union v. company
- (15) union members v. company (or employee v. union)
- (16) employee v. employer

Economic Regulation

- (17) commercial regulation (anti-trust, agriculture, regulatory commissions)
- (18) pure food and drug cases (includes consumer and environmental protection)
- (19) local economic regulation
- (20) labor cases - (includes all cases where the Secretary of Labor and the NLRB are parties, and includes all Fair Labor Standards Acts cases)
- (21) rent control, excessive profit, price control

Each policy statement (opinion) was the source of the following information:

- a. the identity of the judge/author.
- b. the court point, district, state, and circuit from which the opinion was issued.
- c. the date of the opinion.
- d. the number of judges at the court point.
- e. the liberal or conservative nature of the opinion (operationally defined below).
- f. the type of case.

The use of published opinions to examine variance in policy propensities among federal district judges raises certain questions in that these published opinions reflect a relatively small percentate (approximately five percent) of the decisions reached by these judges each year. Further, since the judges themselves select which of their decisions warrant written opinions and which of these opinions to submit for publication, the written opinions in no way represent a random sample of federal district judge decisions. Nonetheless, the use of published opinions can be justified on several grounds:²

- 1. As a practical consideration, unpublished decisions are not available to the researcher, short of a review of the transcripts in each court.

2. West Publishing Company exercises no editorial control over which opinions are published; therefore, published opinions represent those cases self-selected by judges as of sufficient substantive importance to justify the time and effort to write and publish a formal opinion. This seems to suggest support for Jacobs' contention that published opinions represent what judges perceive as their most important policy outputs, those worthy of formal codification as policy statements.³ As formal policy statements, these opinions are accessible to other participants in the judicial process. Therefore, these opinions are interesting in and of themselves beyond any consideration of their generalizability to the larger universe of judicial decisions.
3. No formal statistical inference to the population of federal district decisions is made from this set of opinions--i.e., they are treated as a universe of policy statements, not as a simple random sample of decisions

In addition to the data furnished by published opinions, politically relevant judge background characteristics were gathered for each federal district judge seated from 1933-1972. The Federal Supplement,⁴ Who's Who,⁵ and personal communications from Russell Wheeler⁶ were used to identify the following political background characteristics for each judge:

1. Political Party Affiliation: Given the evidence that the courts are political institutions, judges' party affiliations should effect their policy propensities to the extent that American political parties are policy relevant and that liberal/conservative is a relevant policy dimension.
2. Appointing President: Appointing president may be deduced from year appointed; however, its effect will be tested independently to examine the relative effects of each independent variable.
3. Federal district judge experience was ascertained for each opinion writer by subtracting year appointed from the year in which the opinion was issued. This variable may be important as a rough surrogate for age and as an indicator of local judicial experience, both of which have proven salient in earlier studies. (Unfortunately, collection of data re prior experience on the state or local bench was impossible for such a large data base.)

OPERATIONALIZATION OF LIBERAL OPINIONS AND LIBERAL POLICY PROPENSITIES

Several studies have identified two components of judicial liberal-

ism--civil and economic.⁷ In combination, these components are reflected in support for the individual against the state, support for the underdog or weaker litigant in civil litigation, support of labor over management, and support for government regulation of the economy.⁸ Thus, liberal opinions will be operationally defined as those which:

1. favor the defendant in criminal procedure cases,
2. favor minority, Indian, Alien, or female litigants in class discrimination cases,
3. favor individual expression in freedom of expression cases,
4. favor labor unions or the employee over management and the union over the employee,⁹ in labor relations cases,
5. favor the government in economic regulation cases.

Each judge will also be assigned a liberal propensity score. The liberal propensity of each judge will be operationalized as the percentage of that judge's opinions which may be classified as liberal. In addition to recording each judge's overall liberal propensity, a liberal propensity score will be assigned to each judge for combinations of certain sub-categories.

The remainder of this chapter will consist of a summary of the questions to be posed, the hypotheses to be tested, and the methods of data analysis to be utilized. The summary will be outlined according to chapter.

Chapter Three

This chapter is a test of the relationship between background characteristics of the opinion-writer and the liberal or conservative nature of the opinion. Initially, the following opinion-writer background

characteristics will be described for this universe of opinions.

- 1) The number and percentage of opinions issued by judges affiliated with each major party.
- 2) The number and percentage of opinions issued by judges appointed by each president from Harding to Richard Nixon.
- 3) The number and percentage of opinions issued by judges who were appointed by presidents of the opposite political party--i.e., Democrats appointed by Republicans and Republicans appointed by Democrats.
- 4) The number and percentage of opinions issued by experienced and inexperienced judges. This will be described in detail by arranging opinions into categories based on the opinion writer's time on the federal bench at the time the opinion was issued. These categories will be defined by one year increments from less than one year experience to more than 25 years experience. Thus, the number and percentage of opinions will be reported for each of 27 federal judicial experience categories.

Next, the number of opinions and number and percentage of liberal opinions are reported for all cases, for each category, and for each of the 21 sub-categories of cases. Finally, with the opinion as the unit of analysis, each background characteristic will be tested for its association with liberal opinions. Measurement of this association will be discussed in some detail for each background characteristic.

Political Party Affiliation

The first relationship to be examined is that between political party affiliation of the opinion-writer and the liberal/conservative nature of the opinion. The question to be addressed is: to what extent can the liberal or conservative nature of the opinion be predicted from the political party affiliation of the opinion-writer? To answer this question, the data will first be arranged in a 2 x 2 table as follows:

Democrats	a	b
Republicans	c	d

where a = the percentage of opinions written by Democrats which are liberal

b = the percentage of opinions written by Democrats which are conservative

c = the percentage of opinions written by Republicans which are liberal

d = the percentage of opinions written by Republicans which are conservative

If party affiliation has no effect one would predict that $a = c$ = the percentage of the universe of opinions which are liberal. The question implicit in this data arrangement is whether, by knowing each opinion writer's political party affiliation, one can improve that prediction and bring about a proportional reduction in error. Based on earlier research reviewed in chapter one, the following hypotheses will be tested concerning the effect of party affiliation:

Hypothesis 3a: The percentage of Democratic opinions that are liberal will exceed the percentage of Republican opinions that are liberal.

To test the hypothesis, the Lambda (λ_{yx}) and Uncertainty Coefficient (UC) measures of association will be applied. Lambda is an asymmetric measure of association suited to bivariate distributions of two nominal level variables.¹⁰ For example, assume that 55 percent of the 21,142 opinions are conservative; thus, "conservative" is the model response. In the absence of other knowledge, one could predict that each opinion would be "conservative" and be correct 55 percent of the time. However,

one may hypothesize that by knowing the opinion writer's party affiliation one could reduce the frequency (45 percent) of incorrect predictions. This hypothesis may be tested by using Lambda to measure the association between party affiliation of an opinion writer and the liberal or conservative nature of that opinion.

The formula of Lambda is:

$$\lambda_{yx} = \frac{\sum my - My}{N - My}$$

where: N = the total number of cases

My=the overall modal frequency of the modal opinion category
(This will be the frequency of liberal or conservative opinions, whichever is greater.)

my=the sum of modal frequencies of liberal/conservative opinions within each category of party affiliation.

The Lambda coefficient produced by this formula may be interpreted as the percentage reduction in errors made in predicting the number of liberal (or conservative) opinions when prediction is based on the party affiliation of the opinion writer rather than the percentage of the modal frequency category. For example, if $\lambda = .38$, this would indicate that the researcher made incorrect predictions as to the liberal/conservative nature of the opinion 38 percent fewer times by basing his prediction on the opinion writer's party affiliation rather than basing it on the modal response for both parties. Thus, to continue the hypothetical case above in which 55 percent of the opinions are "conservative," a $\lambda = .38$ would indicate that by knowing party affiliation the percentage of incorrect predictions could be reduced from 45 percent to 28 percent.

The Lambda statistic is an effective measure when each background

category is associated with a different modal response--i.e., if most Democratic opinions are liberal and most Republican opinions are conservative. Lambda is not, however, sensitive to differences within the same modal category. For example, if 48 percent of the opinions returned by Democrats were liberal and only 28 percent of the opinions returned by Republicans were liberal, a substantial disparity would exist between the two parties; yet, Lambda would be insensitive to this disparity since the modal category for both parties is conservative.

Therefore, another asymmetric measure suitable for nominal level data will also be utilized. The Uncertainty Coefficient (UC) measures the proportion by which uncertainty in the dependent variable is reduced by knowledge of the independent variable.¹¹ For example, UC would measure the extent to which uncertainty in predicting the liberal/conservative nature of an opinion is reduced by knowing the political party affiliation of the opinion-writer. This measure is, therefore, similar to Lambda, except that the Uncertainty Coefficient is sensitive to the entire distribution, not just the mode.

The formula¹² for UC with 'Y' as the dependent variable is:

$$UC = \frac{U(Y) - U(Y/X)}{U(Y)}$$

where: U = uncertainty

U(Y)= the average uncertainty in the marginal distribution of Y

U(Y/X)= the average uncertainty in the marginal distribution of Y,
given knowledge of X

The maximum value for UC is 1.0, indicating total elimination of uncertainty. The minimum value is zero, indicating no reduction in

uncertainty. A UC value of zero would occur only if each category of the dependent variable has the same distribution for the dependent variable.

After measuring the association between the party affiliation of the opinion writer and the liberal/conservative nature of the opinion across all 21,142 opinions, the same association will be measured for each of the 21 case subcategories. The hypothesized nature of the relationship between Democratic opinion-writers and liberal opinions is extended to three categories, and the same measures of association will be used.

Hypothesis 3b: Democratic judges will issue a higher percentage of liberal opinions in criminal cases, labor cases and regulation cases than will their Republican counterparts.

However, based on the studies by T. Walker and by Richardson and Vines cited in chapter one, no relationship is hypothesized between Democratic opinion-writers and the percentage of liberal opinions in either class discrimination or freedom of expression cases

Appointing President

The next question to be addressed in chapter three will be whether knowing the opinion writer's appointing president aids in predicting the liberal or conservative nature of the opinion. As noted in the introduction, the tendency for presidents to appoint judges from their own party is well established; however, this question allows one to test for differences among those judges affiliated with the same party but appointed by different presidents.

This universe of opinion writers includes judges appointed by each president from Theodore Roosevelt to Richard Nixon. However, only a trivial number of the opinions studied here were written by judges

appointed prior to the Harding Administration. Thus, in addressing the question of the predictive value of knowing the opinion writer's appointing president, we will focus on those judges appointed by Presidents Harding, Coolidge, Hoover, Franklin Roosevelt, Truman, Eisenhower, Kennedy, Johnson, and Nixon.

Prior to analyzing this relationship, the opinions will be presented in a 1 x 9 table as follows:

	Nixon	LBJ	JFK	Eisenhower	Truman	FDR	Hoover	Coolidge	Harding
Liberal %	a	b	c	d	e	f	g	h	i

where: a = the percentage of Nixon appointees' opinions which are liberal.
 b = the percentage of Johnson appointees' opinions which are liberal.
 c = the percentage of Kennedy appointees' opinions which are liberal.
 d = the percentage of Eisenhower appointees' opinions which are liberal.
 e = the percentage of Truman appointees' opinions which are liberal.
 f = the percentage of Roosevelt appointees' opinions which are liberal.
 g = the percentage of Hoover appointees' opinions which are liberal.
 h = the percentage of Coolidge appointees' opinions which are conservative.
 i = the percentage of Harding appointees' opinions which are conservative

If appointing president has no effect, one would predict that:

a = b = c = d = e = f = g = h = i = the percentage of this population
 of opinions which the researcher
 has defined as liberal.

Thus, in the absence of better information, if 55 percent of the opinions are conservative one would predict that each opinion would be conservative

and be correct 55 percent of the time. Such predictions would, of course, be incorrect 45 percent of the time. The question addressed in this question then becomes whether by knowing each opinion writers appointing president one can improve that prediction and bring about a proportional reduction in prediction error. The Lambda (λ_{yx}) and UC measures of association will once more be utilized to determine whether knowledge of appointing president has produced a proportional reduction in error. After testing the effect of appointing president across all non-trivial cases, the same effect will be tested for each of the 21 case sub-categories. The same data presentation (2 x K tables) and measures of association will be applied to each sub-category as were used in analyzing the population of non-trivial cases.

In addition to facilitating tests for the effect of appointing president, knowledge of appointing president and party affiliation facilitate comparisons among those judges affiliated with the same party but appointed by different presidents. For example, do Democrats appointed by Truman write more or fewer liberal opinions than do Democrats appointed by Johnson? Given the generally weak U.S. party system reviewed in chapter two, the following hypothesis will be tested:

Hypothesis 3c: Significant differences in the percentage of opinions which are liberal will occur among appointees of presidents from the same political party.

The percentage of opinions returned by each president's nominees which are liberal will be compared to the proportion of the population of the opinions issued by that party's judges which are liberal. A "Z" test statistic will be computed to determine which differences are statistically

significant. When testing differences in proportions, the formula for Z is:¹³

$$Z = \frac{p - P}{\sqrt{PQ/n}}$$

where: P = population proportion

p = sample proportion

Q = inverse of population proportion

The significance of the test statistic will be ascertained by consulting a standard table of probabilities defined by areas under the normal curve.¹⁴

Aside from substantive interest, these differences between judges of the same party will be important in defining a predictive linear model to be tested in the final chapter.

Opposite Party Appointments

A secondary question is raised by analyzing the effects of party affiliation and appointing president. Do judges appointed by presidents from the opposite party behave differently from judges appointed by presidents from their own party? For example, does the behavior of Democratic judges appointed by the Republican presidents differ from that of Republican judges appointed by Republican presidents? This possibility will be investigated by isolating opposite party appointments and arranging them in a 2 x 2 table as follows:

	Liberal	Conservative
Demos Appt. by Republicans	a	b
Republicans Appt. by Demo- crats	c	d

where: a = liberal opinions issued by Democratic judges appointed by
Republican

b = conservative opinions issued by Democratic judges appointed
by Republican

c = liberal opinions issued by Republican judges appointed by
Democrat

d = conservative opinions issued by Republican judges appointed by
Democrat

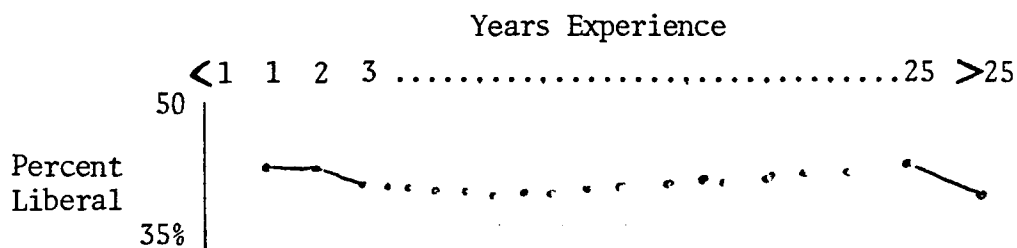
The effects of opposite party appointments will be analyzed by subjecting them to the same measures of association used to test party affiliation effects. Unfortunately, the small number of cases involved make it impossible to test this effect for each sub-category.

Tenure as Federal District Judge

The last relationship to be tested in this chapter is that between the opinion-writer's federal bench experience and the liberal or conservative nature of the opinion. Based on the work cited in chapter one, the following hypothesis will be tested:

Hypothesis 3d: The probability that an opinion will be conservative will increase as the federal judicial tenure of the opinion-writer increases.

To test this hypothesis, each opinion will be categorized by the opinion-writer's tenure at the time of the opinion (year opinion issued-year opinion writer appointed). The opinions will then be arranged in categories defined by one year experience increments from less than one year to more than 25 years. The liberal percentage for each experience category will be graphed as a univariate distribution:



Next, Lambda and UC will be used to measure the predictive value of knowing the opinion writer's years of experience as a federal district judge. This relationship will be tested separately for economic and non-economic opinions.

In chapter one, earlier studies were criticized for using research designs quite similar to the one outlined for this chapter and for using the case as the unit of analysis when studying among-judge differences. The outline of chapter four below describes an attempt to overcome this shortcoming through aggregation of cases by judge and focusing on the judge as the unit of analysis.

Chapter Four

This chapter examines largely the same questions as did chapter three, with one major exception--the opinions are aggregated such that the unit of analysis becomes the 871 opinion-writers rather than the 21,142 opinions. The dependent variable, therefore, becomes each opinion-writer's liberal propensity score, operationally defined as the percentage of that judge's opinions which are liberal. Thus, even though largely the same relationships between politically relevant background characteristics are tested, the use of an interval level dependent variable facilitates more sophisticated data analysis which may result in substantially different findings. Perhaps more importantly, the focus on opinion writers will enable us to test the validity of generalizing from

opinions to opinion writers by comparing chapter four's findings with those in chapter three.

The chapter begins with a description of the distribution of opinion writers by party affiliation and appointing president. Next, the distribution of liberal propensity scores is reported. Given the interval nature of liberal propensity scores, measures of central tendency (mean) and variance (standard deviation) are utilized to report their distribution. This distribution is, of course, compared to the distribution of liberal percentages in chapter three.

In addition to describing the distribution of liberal propensity scores for all cases, the distribution will be described for more specific case categories. However, given the reduction in the number of cases from 21,142 opinions to 871 judges, it is not possible to aggregate judge propensities for each of the 21 case sub-categories. Therefore, five aggregated categories will be developed from those categories and/or sub-categories which hint at particularly interesting outcomes when subjected to analysis by opinion in chapter three. The aggregated categories will be defined and justified in chapter four before describing the liberal propensity distribution for each of them.

After describing the distribution of aggregated background characteristics and liberal propensities, chapter four focuses on the relationship between the two. This relationship is reported in two steps.

Step one is a description of the mean liberal propensity differences between affiliates of each party and among the appointees of each president. Since this research is based on the population of opinion writers, differences are not subjected to tests of statistical significance.

Differences between parties and among presidents are, however, measured and discussed. Perhaps more importantly, mean opinion writer liberal propensity scores are compared with the percentages of liberal opinions reported in chapter three for all cases and for each of the five aggregated categories. Thus, the validity of generalization from opinion to opinion writer is tested explicitly.

As with chapter three, Democrats are expected to display more liberal policy propensities than do their Republican counterparts:

H4a: The mean liberal propensity score for Democrats will be higher than the mean liberal propensity score for Republicans for all cases and for each aggregated case category.

Step one also addresses the question of whether propensities of opinion writers appointed by a given president are significantly different from those appointed by other presidents of the same party. The null hypotheses that the mean liberal propensity of each president's appointees is equal to the mean for the population of appointees of the appointing president's party will be tested. Thus, each president's appointees will be treated as a sample of the population of opinion writers appointed by that party's presidents. For each sample the null hypothesis would predict that the sample mean would equal the mean for that party's population of appointees:

$$H_0: u = \bar{X}$$

$$H_1: u \neq \bar{X}$$

where: \bar{X} = sample mean

u = population mean

The "Z" test statistic for sample means will be used to test the null hypothesis. The formula for Z when the population mean and variance

are known is:

$$z = \frac{\mu - \bar{X}}{\sqrt{\sigma^2/n}}$$

The significance of the test statistic will be ascertained by reference to a standard table of probabilities associated with "Z" scores defined by areas under the normal curve. The result of this test will be compared with the difference in liberal proportion tests reported in chapter three.

The second step in measuring the relationship between background characteristics and liberal propensity is an attempt to explain variance among judges in liberal propensities by differences among judges in background characteristics. The basic analytic method used to test these relationships will be bivariate and multiple correlation analysis with effect coded independent variable(s). In many ways a simple, one-way analysis of variance (ANOVA) would be appropriate for this analytic task. However, in this writer's opinion, correlation analysis with effect coding of categorical independent variables is both appropriate and practical with a relatively small number of independent variables, and it offers at least two advantages over ANOVA for this data set.¹⁵

First, since there are substantially more Democrats than Republicans on the federal bench, ANOVA cell sizes would be unequal and disproportionate. This inequality would create problems in both computation and interpretation.

Second, the results of regression analysis may be interpreted more explicitly and therefore provide a more complete and direct comparison between relationships or between independent effects on the same dependent variable.¹⁶

The Statistical Package for the Social Sciences (SPSS),¹⁷ regression program computes several statistics which enable one to evaluate the relationship between a single dependent variable and one or more independent variables. The following statistical measures will be reported and discussed:

r = bivariate correlation coefficient, measuring the strength and direction of the relationship between liberal propensity and each independent variable

R = the multiple correlation coefficient

R^2 = the amount of variance in liberal propensity explained by variance in two or more independent variables.

The use of regression or correlation analysis with nominal level independent variables is made possible by dummy or effect coding of independent variables.¹⁸ Dummy coding¹⁹ systems generate a vector for each category of a nominally coded variable. In each vector, membership in that category is assigned "1" while non-membership is indicated by a "0." An effect coded dummy variable is a vector in which all subjects in a certain category of a categorical variable are assigned a "1," while subjects not belonging to that category are assigned a "0" or a minus one. The number of vectors necessary to exhaust information about membership in each category is equal to the number of categories (k) minus one ($k-1$). Thus, the last category is coded as a vector of minus ones.

This coding scheme can be explicated by using religious affiliation as an example. Assume that a sample includes three affiliates of each major religion. For purposes of data collection each denomination (category) would be assigned a value:

Protestant = 1 (n=3)
 Catholic = 2 (n=3)
 Jewish = 3 (n=3) } N=9

Further assume that the researcher wished to test the effects of religious affiliation on an interval dependent variable--religious liberalism.

Religious affiliation would be effect coded as two dummy variables.

	<u>DV1</u>	<u>DV2</u>
p1	1	0
p2	1	0
p3	1	0
c1	0	1
c2	0	1
c3	0	1
j1	-1	-1
j2	-1	-1
j3	-1	-1

where: DV1 = Protestant affiliation

DV2 = Catholic affiliation

(the remainder of cases associated with the Jewish religion by default)

Before effect coding, the predicted score for any individual on a religious liberalism test would equal the mean for the entire set of nine respondents. However, after effect coding, each individual's predicted score is the mean of his/her religious category; therefore, predictive accuracy will be increased and unexplained variance decreased to the extent that religious affiliation has an effect on religious liberalism.

Party Affiliation

The relationship between liberal propensity and several politically relevant background variables will be subjected to analysis as outlined above. The first relationship to be tested is that between each judge's political party affiliation and his liberal policy propensity. Political

party affiliation has been broken into four categories to include opposite party effects:

1. Democrats appointed by Democratic presidents. (D by D)
2. Democrats appointed by Republican presidents. (D by R)
3. Republicans appointed by Republican presidents. (R by R)
4. Republicans appointed by Democratic presidents. (R by D)

This nominal level independent variable has been effect coded into three dummy variables.

	<u>DV1</u>	<u>DV2</u>	<u>DV3</u>
D by D	1	0	0
D by R	0	1	0
R by R	0	0	1
R by D	-1	-1	-1

Given the operational definition of liberal propensity as the percentage of a judge's opinions which are liberal, if party affiliation has no effect, both Democrat and Republican liberal propensity will equal the mean liberal propensity for the population of 871 judges. The analytic problem becomes one of comparing variance in liberal propensity between Republicans and Democrats with variance within each party. To the extent that party affiliation explains liberal propensity variance between-party variance will exceed within party variance. To the extent that hypothesis 4a is correct, Democrats tend to cluster above the liberal propensity mean and Republicans below that mean, for all cases and for each aggregated case category.

Appointing President

The next relationship to be examined is that between appointing

president and the liberal policy propensities of that president's appointees. Since no body of theory exists concerning the effects of appointing president, no hypotheses will be offered. As with party affiliation, the value of knowing the president who appointed a judge in predicting that judge's liberal propensity will be analyzed through correlation analysis and effect coding. However, since the effects of seven appointing presidents are being tested, the coding involved is somewhat more complex. Appointing president will be effect coded as follows:

	<u>P1</u>	<u>P2</u>	<u>P3</u>	<u>P4</u>	<u>P5</u>
Nixon	1	0	0	0	0
Johnson	0	1	0	0	0
Kennedy	0	0	1	0	0
Eisenhower	0	0	0	1	0
Truman	0	0	0	0	1
Roosevelt	-1	-1	-1	-1	-1

As with party affiliation, the effect of appointing president will also be tested for specific case types to be determined by the analysis in chapter three.

In sum, chapter four is largely a replication of chapter three with an interval level dependent variable and the judge, rather than the case, as the unit of analysis. The next chapter retains the opinion-writer as the unit of analysis but examines spatial effects.

Chapter Five

Chapter five is devoted to increasing understanding of the inter-

action between the spatial setting and party affiliation on judges propensity to issue liberal opinions by exploring the following two general questions:

1. What are the differences in mean liberal propensity among circuits and states for all cases and for each aggregated case category?
2. What are the differences in liberal propensity between Democratic and Republican opinion writers under controls for circuit?

As with chapter four, opinions are aggregated by opinion writer and variance is measured in liberal propensity. However, variance is measured among circuits and among states as well as among judges. The methods used to address each question are outlined separately.

Variance Among Circuits and States

Liberal propensity differences among circuits and states will be explored in three steps. First, the distribution of federal judicial districts by circuits and states will be described briefly. Next, the distribution of opinion writers' mean liberal propensity and the standard deviation of liberal propensity scores will be described by circuit for all cases and for each aggregated case category. Given the large number of independent categories (10 circuits, 50 states), one-way analysis of variance (ANOVA) will be utilized to compute an "F" test statistic to determine whether differences among circuits are significantly greater than liberal propensity variance within circuits. Anova will also be utilized to compute the Eta squared (E^2) measure of explained variance.

While dummy regression techniques were preferred over ANOVA in chapter four's analysis, simple ANOVA is consistent with the exploratory nature of the search for spatial differences and with the large number

of effect categories. The F test statistic is a measure of the ratio between dependent variable variance within categories and variance between categories.²⁰ To the extent that between category variance exceeds within category variance, the magnitude of the F statistic increases. Statistical significance is a function of the magnitude of the F statistic in relation to the number of categories and number of cases under consideration.²¹ Significance will be determined by reference to a standard table of F distributions. Eta squared is analogous to R^2 --i.e., a measure of the variance in the dependent variable (liberal propensity) which is explained by knowing the subject's (opinion-writer's) independent category (circuit or state).²²

ANOVA will be used to test the following hypothesis:

Hypothesis 5a. Among circuit variance in liberal propensity will exceed within circuit variance in liberal propensity to a statistically significant degree for all cases and for each aggregated case category.

$$H_1: u_1 \neq u_2 \neq \dots u_{11}$$

$$H_0: u_1 = u_2 = \dots u_{11}$$

The analytic question is whether each circuit's opinion writers can be treated as a sample of opinion-writers drawn from the same analytic populations (H_0) or whether they constitute analytically separate populations (H_1). If the variance in liberal propensity among circuits exceeds that within circuits to a statistically significant degree, one may conclude that each circuit represents an analytically separate population and accept hypothesis 4a; if not, one must reject 4a and accept the null hypothesis.

Finally, in step three, the distribution of opinion-writer mean

liberal propensity and the standard deviation will be presented by state for all cases and for each aggregated case type.

The following hypothesis will be tested:

Hypothesis 5b: Among state variance in mean liberal propensity will exceed within state variance to a statistically significant degree for all cases and for each aggregated case category.

$$H_1: u_1 \neq u_2 \neq \dots u_{50}$$

$$H_0: u_1 = u_2 = \dots u_{50}$$

As with circuit differences, the F statistic and Eta squared (E^2) will be used to test the statistical significance and variance explained by among state differences. In addition to exploring overall differences among states, this section will explore differences in mean liberal propensity between each state and its parent circuit.

To facilitate the testing of H5b and exploring differences between states and their parent circuits, the states will be arranged by circuit. A propensity heterogeneity score (PH) equal to the average absolute difference between the circuit mean liberal propensity and the mean liberal propensity score of each state within that circuit will be reported for each circuit:

$$\text{Propensity Heterogeneity (PH): } \frac{(\text{circuit } \bar{X} - \text{state } \bar{X})}{N \text{ of states}}$$

Among Party Differences by Circuit

The final part of this chapter is devoted to exploring mean liberal propensity differences between Democratic and Republican judges under controls for circuit. In controlling for jurisdiction and party, data

reduction is substantial. Therefore, no measures of association, explained variance or statistical significance will be reported. Further, cell sizes are too small to report party differences under controls for each state. However, among state differences are reported in Appendix B and specific within differences may be referred to in discussing patterns of within circuit differences between parties.

The number of judges, mean liberal propensity score, standard deviation and difference between the party means will be presented in tabular form by circuit. While these descriptive statistics are of limited predictive value, they are consistent with the purpose of this section--i.e., to explore party differences under control for spatial differences in the hope of locating spatial differences in the link between party affiliation and judicial policy propensities.

Chapter Six

As noted in chapter one, policy differences across time have been subjected to no systematic analysis in studies of federal district courts. Chapter six, therefore, explores the effects of time variance on conservative variance in federal district court policy outputs.

The study of temporal effects will consist of two parts. Part one is an exploration of the differences in the percentage of opinions which were liberal for each year from 1933-1972. Part two explores the question of whether between party differences in the percentage of opinions which were liberal increases during certain time periods.

Differences Over Time in the Percentage of Opinions Which Are Liberal

The question addressed in part one is: To what extent has the

percentage of opinions which were liberal fluctuated across time?

Since each opinion writer serves for several years, questions relating to differences among years focus on the opinion, rather than the opinion writer as the unit of analysis for two reasons. First, no attempt is made to generalize from opinions to a link between background and judges' policy propensities. Second, while the basic unit of analysis is the opinion, the question focuses on the aggregate of opinions issued during each year from 1933-1972. The nature of the question addresses differences between sets of opinions defined by year, not by opinion writer. Therefore, this question is not only acceptable as the unit of analysis, it is preferred.

Differences among years in the percentage of opinions which are liberal will be described and measured for all cases. Additionally, time differences will be described for the same aggregates of case sub-categories used to define the aggregated case categories analyzed in chapters four and five. This data is presented by graphing the univariate distribution of the percentage of liberal opinions by year and reporting the number of opinions returned for each year from 1933-1972. Additionally, the ability of the year an opinion was issued to predict whether it is liberal or conservative is reported by predicting the X and UC measures of association for all cases and for each case type.

Party Differences Over Time

As noted in chapter one, a shift in the leadership and ideological make up of the Supreme Court may interact with a related increase in new questions before the lower federal courts to increase the saliency of

party affiliation for federal district judges. Given the ideological differences between Earl Warren and Warren Burger, the identification of Burger with the Republican party and the new Nixon Administration, and the prominence of court-related issues in the Nixon presidency, the shift from Earl Warren to Warren Burger may effect the saliency of party on the federal bench in a manner analogous to the effect of realignment on the 1932 Congress.

This possibility will be explored by testing the following hypothesis:

Hypothesis 6a: Post-1969 interparty differences in the percentage of opinions which are liberal will be greater than were pre-1969 differences for all cases and for each aggregated case category.

This hypothesis will be tested for all cases and for each subcategory combination defined in step one. Again, Lambda (λ) and Uncertainty Coefficients (UC) will be used to measure the ability of an opinion writer's party affiliation to predict the liberal/conservative nature of the opinion.

More importantly, differences in the frequency of liberal opinions issued by Democrats and by Republicans will be computed for each of the eight years from 1965-1972 to determine whether a trend of increased differences can be identified beginning with the advent of the Nixon presidency and appointment of Warren Burger as Chief Justice in 1969.

Application of the methods outlined in this chapter begins in chapter three with analysis based on the opinion as the unit of analysis.

¹Federal Supplement (St. Paul Minn.: West Publishing Co., Annually). The concepts of economic and civil liberalism have been summarized in Glendon Schubert, The Judicial Mind Revisited: Psychometric Analysis of Supreme Court Ideology (New York: Oxford University Press, 1974).

²See especially Kenneth Dolbeare, "The Federal District Courts and Urban Public Policy: An Exploratory Study," in Joel Grossman and Joseph Tanenhaus (eds.), Frontiers of Judicial Research (New York: John Wiley and Sons, 1969), pp. 373-404. Also, Thomas Walker, "A Note Concerning Partisan Influences on Trial Judge Decision-Making," Law and Society Review, Vol. 6 (May, 1972), pp. 645-9.

³Herbert Jacob, Justice in America (Boston: Little, Brown, and Co., 1972), p. 31.

⁴Federal Supplement, op. cit.

⁵Who's Who in America

⁶At the time of data collection, Russell Wheeler was an aide to Chief Justice Burger's Administrative Assistant, Mr. Mark Cannon. Dr. Wheeler is currently associated with the National Center for the Study of State Courts, Denver, Col.

⁷See Glendon Schubert, Judicial Mind Revisited.

⁸This literature was reviewed at length in chapter one. In particular see the work of Stuart Nagel, "Party Affiliation and Judge's Decisions," American Political Science Review, Vol. 55, (June, 1961), pp. 343-5. For a recent review of studies linking judicial backgrounds and decisions, see Sheldon Goldman and Thomas Jahnige, The Federal Courts As A Political System (New York: Harper and Row Publishers, 1976), Chapter three.

⁹Defining a liberal dimension was difficult in this sub-category; however, since pro-union decisions usually imply support for unionization, the pro union position was defined as the more liberal.

¹⁰See Herman L. Loether and Donald G. McTavish, Descriptive Statistics for Sociologists: An Introduction (Boston: Allyn and Bacon, Inc., 1974), chapter 7.

¹¹Norman H. Nie, et. al., Statistical Package for the Social Sciences (New York: McGraw-Hill, 1975), pp. 219-222.

¹²Ibid.

¹³Hubert Blalock, Social Statistics (New York: McGraw-Hill Co., 1970), pp. 149-51.

¹⁴Ibid.

¹⁵Fred N. Kerlinger and Elazar J. Pedhauzer, Multiple Regression in Behavioral Research (New York: Holt, Rinehart and Winston, Inc., 1973), pp. 101-154.

¹⁶Ibid.

¹⁷Nie, op. cit.

¹⁸Kerlinger and Pedhauzer, op. cit.

¹⁹Ibid.

²⁰For an excellent conceptual introduction to this technique, see Donald Ary and Lucy Cheser Jacobs, Introduction to Statistics: Purposes and Procedures (New York: Holt, Rinehart and Winston, 1976), pp. 349-65.

²¹Ibid.

²²Kerlinger and Pedhauzer, op. cit.

CHAPTER THREE

An Exploration of The Relationship Between Opinion-Writer Background Characteristics and the Liberal/Conservative Nature of the Opinion

As indicated by the title, the primary question addressed in this chapter is whether an association exists between judges' background characteristics and the liberal or conservative nature of their opinions. Additionally, two secondary questions will be addressed as components of the larger inquiry. First, do judges whose party affiliation is different from that of their appointing president behave differently from those who are appointed by presidents of their own party? Second, do statistically significant differences in the percentage of liberal opinions returned occur among judges of the same party but appointed by different presidents?

Three background characteristics will be studied: 1) political party affiliation; 2) appointing president; and 3) years of experience as a federal district judge. Opinions are defined as liberal or conservative based on the operational criteria set forth in chapter two.

Chapter three's inquiry involves four steps. First, the distribution of opinions by party affiliation, appointing president and experience of the opinion-writer will be described and discussed. Second, the distribution of liberal and conservative opinions will be described for the universe of cases, for each case category, and for each of the 21 sub-categories. Third, the association between each opinion-writer background variable and the liberal/conservative nature of the opinion will be explored by measuring the extent to which knowing an opinion-

writer's background enables one to reduce error in predicting the liberal/conservative nature of the opinion. Finally, major findings will be summarized and conclusions drawn, with particular attention directed at comparison with earlier studies and questions raised for future studies.

The extant literature and research design associated with each step were presented in chapters one and two. However, appropriate aspects of this literature and design will be reviewed briefly in introducing each step.

The reader is reminded that this work is indeed an exploration across 30 years, 89 districts, and 21 case sub-categories. Thus, in some cases, depth is sacrificed for breadth. Therefore, all comparisons with earlier studies defined by narrower time, space, or subject parameters will be tentative. Further, such an exploration is by definition heuristic, generating more questions and suggestions for future research than answers.

Description of Judge Characteristics

As noted in chapter one, federal district judges tend to be a remarkably homogeneous group in many ways. They share similar legal education and socialization experiences.¹ They tend to share common social backgrounds, i.e., most are middle aged white Protestant males from a comfortable socio-economic situation, with some political experience. However, earlier studies indicate that differences in political background characteristics such as party affiliation and in legal background experiences do exist.² Further, some studies have linked these differences to the liberal/conservative policy direction of judicial

opinions (policy statements).³

Based on the earlier work outlined in chapter one, the following background characteristics will be reported for this universe of opinions involving questions of economic or civil liberalism:

- 1) The number and percentage of these opinions issued by judges affiliated with each major political party.
- 2) The number and percentage of opinions issued by judges appointed by each president.
- 3) The number and percentage of opinions issued by judges who were appointed by presidents of the opposite political party--i.e., Democrats appointed by Republican presidents and Republicans appointed by Democratic presidents.
- 4) The distribution of opinion writer experience on the federal bench.

The size (N=21,142) and scope (1933-72) of this data set made collection of other potentially important background data impossible. For example, both age and prior state or local political experience have been suggested as valuable predictors of the judicial decision,⁴ yet neither could be ascertained for this set of opinion writers. None-the-less, the characteristics presented below in Table One present an interesting picture of this set of opinion-writers.

Party Affiliation and Appointing President

As indicated by Table One, 62 percent of the opinions in this universe were returned by Democrats while only 38 percent were issued by Republican judges. Likewise, 65 percent of this set of opinions were

TABLE 1

Frequencies of Opinion-writer Background Characteristics

Political Party Affiliation: Opinions Written by:

Democrats	12,216	62%
Republicans	7,587	38%
Unknown	1,339	--
	<u>21,142</u>	<u>100%</u>

Appointing President: Opinions Written by:

	<u>N</u>	<u>% of all opinions</u>		<u>N</u>	<u>% of all opinions</u>
Nixon Appointees	967	4.6	Hoover Appointees	1068	5.1
Johnson Appointees	3611	17.1	Coolidge Appointees	692	3.3
Kennedy Appointees	3294	15.6	Harding Appointees	536	2.5
Eisenhower Appointees	3946	18.7	Wilson Appointees	94	.4
Truman Appointees	3765	17.9	Taft Appointees	24	.1
F.Roosevelt Appointees	3053	14.5	T. Roosevelt		
			Appointees	4	-
			Unknown	88	
				<u>21,142</u>	<u>100</u>

Opinions Written By Judges Appointed By:

Democrats	13,817	65%
Republicans	7,237	35
Unknown	88	--
	<u>21,142</u>	<u>100%</u>

issued by judges appointed by Democratic presidents, while only 35 percent were written by judges appointed by Republican presidents.

Neither the overrepresentation of Democrats nor the similarity between the party affiliation of the opinion-writer and that of the appointing president is surprising. As indicated by Table 1, the vast majority of opinions were written by judges appointed since the 1932 realignment which marked the beginning of the current Democratic era.⁵ Thus, Democratic presidents have had the opportunity to appoint more judges during this time frame than have their Republican counterparts.

Given the large number of federal judges appointed by President Nixon,⁶ the relatively low percentage of opinions returned by Nixon appointees may seem surprising at first glance. However, two factors account for the small number of opinions by Nixon appointees. First, this data set includes only those opinions returned through 1972; thus, only Nixon appointees from 1969, 1970, 1971, and early 1972 had the opportunity to issue opinions included in this data set. His later appointees are not included in this data set. Second, even early Nixon appointees had been on the bench a short time and could hardly be expected to equal in two to three years the 10-year proliferation of opinions by, for example, a Kennedy appointee. Other information not reflected in Table One further supports the argument that the low number of opinions by Nixon appointees reflects a lack of opportunity rather than a disinclination to issue opinions. For example, only 43 of the 21,142 opinions were written by judges appointed in 1972, while 1970 appointees were responsible for 464 opinions.⁷

While the small number of opinions by Nixon appointees is easily

explained, it serves as a reminder that we are dealing with opinions not judges, as the unit of analysis. At the very least, this rekindles caution introduced in chapter one about the dangers of generalizing to judge's policy propensities from studies which focus on the individual case or opinion as the unit of analysis.

Opinions By Opposite Party Appointees

One is also well advised to heed this caution when describing the frequency of opinions by opposite party appointments. Here again opinions, not judges, are the unit of analysis and our ability to generalize to presidential appointing behavior is limited. Nonetheless, the distribution of opinions written by opposite party appointees is interesting for three reasons:

- 1) It furnishes the descriptive prerequisite for tests of association in step three;
- 2) It furnishes a basis for comparison when the same distribution is described with the judge as the unit of analysis in chapter four below,
- 3) It serves to indicate whether earlier findings that approximately 90 percent of lower federal judicial appointees are from the appointing president's party⁸ are reflected in this distribution of policy statements.

Table two describes the frequency of opinions by opposite party appointments.

As would be predicted from Goldman's work,⁹ table two suggests that the vast majority of these opinions were written by judges affiliated with the political party of their appointing president. Specifically,

TABLE 2

Distribution of Opposite Party Appointments

Distribution by Party

Opinions Written by:	<u>N</u>	<u>% of all opinions</u>	<u>% of that party's opinions</u>
1) Democrats appointed by Republicans	340	1.7	2.5
2) Republicans appointed by Democrats	<u>787</u>	<u>4.0</u>	<u>10.0</u>
	1127	5.7	12.5

Distribution By Appointing President

<u>Republicans</u>	<u>N</u>	<u>% by Pres</u>	<u>% D by R</u>	<u>Democrats</u>	<u>N</u>	<u>% by Pres</u>	<u>% D by R</u>
Nixon	56	5.8	16.5	Johnson	225	6.2	28.6
Eisenhower	88	2.2	25.9	Kennedy	374	11.4	47.5
Hoover	144	13.7	42.4	Truman	188	6.6	23.9
Coolidge	5	.8	1.5	FDR	0	0	0
Harding	43	8.0	12.6	Wilson	0	0	0
T. Roosevelt	0	0	0				
Taft	<u>4</u>	16.7	<u>1.2</u>		<u>—</u>		<u>—</u>
	340		100.1		787		100.0

less than two percent of these opinions were written by Democrats appointed by Republicans, while only four percent were written by Republicans who had been appointed by Democrats. Likewise, only two and one half percent of the opinions written by Democrats were written by judges who had been appointed by Republicans. However, fully 10 percent of Republican authored opinions were written by judges who had been appointed by Democratic presidents. In all probability, this large disparity reflects the fact that the bulk of our opinion writers have been appointed during the current Democratic era, giving Democratic presidents the opportunity to appoint more judges than their Republican counterparts. This disparity will be examined again in chapter four with the judge as the unit of analysis. However, table two also reflects substantial disparities among appointing presidents in opinions returned by opposite party appointments. Students of judicial appointment have noted that before the emergence of a viable Republican party in the South, Republican presidents were often forced to appoint Democrats to the federal bench in Southern states.¹⁰ The frequency of opinions by Democratic Hoover appointees would seem to support this. Almost 14 percent of opinions by Hoover's appointees were issued by Democrats; even more to the point, over 42 percent of all opinions by Democrats who had been appointed by Republicans were by Hoover appointees. This same tendency is reflected to a lesser degree for Harding; but not for Coolidge.

The difference between Nixon and Eisenhower is interesting. The opinion-based data in table two seem to suggest that Eisenhower, a virtual party neophyte, was more party oriented in his appointments than was Nixon, the party veteran. In fact, Nixon appointee opinions

were almost three times as likely to be written by Democrats as were those of Eisenhower appointees. Why is this? It may reflect Nixon's well documented attempts to create an identity above the Republican party which reached its zenith in the virtually non partisan Committee to Re-elect the President and the 1972 campaign. However, to this writer, a more plausible explanation lies in Nixon's equally well documented campaign to place "tough judges" and strict constructionalists on the federal bench as part of his "law and order" campaign.¹¹ Under these circumstances, ideological considerations may sometimes displace party loyalty.¹²

These data would certainly suggest a strong element of party loyalty on the part of both Franklin Roosevelt and Woodrow Wilson in their judicial appointments. No Republican opinion in this data set was issued by a Roosevelt or by a Wilson appointee. On the other hand, over 11 percent of the opinions by Kennedy appointees were issued by Republicans. Likewise, over six percent of the opinions issued by Johnson and Truman appointees were written by Republicans. In this writer's opinion, these general differences and the rather extreme difference for Kennedy appointees may be the result of two contributing factors. First, there is evidence that Kennedy, like Nixon, placed heavy emphasis on ideological considerations which may have crossed party lines in his selection of federal judges.¹³

Second, there is evidence to suggest a gradual decline in the link between political party and public policy in Congress since the 1932 realignment and the New Deal era.¹⁴ Given our view of the courts as political institutions involved in the policy process and our view of judicial opinions as policy statements, the increased number of opinions

by opposite party appointments may be viewed as another aspect of the deteriorating linkage between party and public policy.¹⁵

In sum, there are differences between parties and among presidents in the frequency of opinions by opposite party appointees. These differences appear to reflect shifts in the link between political parties and public policy and may also reflect the importance of ideological concerns to some presidents. These possibilities will be examined again in the following chapter with the judge rather than the opinion as the unit of analysis.

Length of Federal Judicial Tenure

Another background characteristic which may effect the liberal/conservative nature of an opinion is the judicial experience of the opinion writer. The distribution of opinion writer experience for this set of opinions is presented in table three. As indicated, 717 (3.4 percent) opinions were issued by opinion writers with less than one year of experience, while two were issued by opinion writers with fifty three years experience. A comparison of the mode (one year), median (6.3 years) and mean (7.9 years) years of experience indicates that opinion writer experience is not distributed normally. Rather, the distribution is somewhat flat and skewed to the right as depicted in Figure 1.

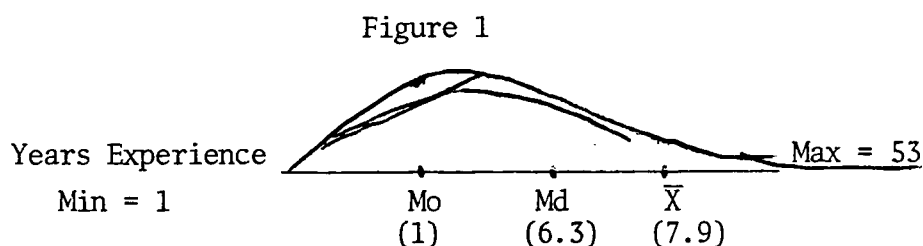


TABLE 3
Years on Federal Bench When Opinion Issued

<u>Years of Experience</u>	<u>N</u>	<u>Percent</u>
< 1	717	3.4
1	2021	9.6
2	1824	8.6
3	1606	7.6
4	1629	7.7
5	1515	7.2
6	1299	6.1
7	1173	5.5
8	1134	5.4
9	1093	5.2
10	1015	4.8
11	752	3.6
12	605	2.9
13	588	2.8
14	470	2.2
15	399	1.9
16	357	1.7
17	410	1.9
18	346	1.6
19	325	1.5
20	279	1.3
21	270	1.3
22	194	.9
23	149	.7
24	110	.5
25	98	.5
> 25	364	1.7

Min = < 1	Max = 53
\bar{X} = 7.9	Mo = 1.00
Md = 6.3	s = 6.3

At first glance, this distribution might seem to indicate that inexperienced judges are the most prolific opinion-writers. Perhaps it is important for the new judge to establish his position on important policy questions early in his tenure. On the other hand, the gradual slope of the declining frequency of opinion-writing appears to indicate a natural attrition associated with retirement and death. To test these possibilities, one could study the modal, mean, and median tenure of federal district court judges. If the distribution resembled the opinion frequency distribution, the attrition explanation would gain plausibility. If, however, the tenure distribution more nearly resembled a normal curve, one could hypothesize some association between opinion writing propensity and short federal district bench tenure.

Having established the distribution of background characteristics, the study now turns to step two, a description of the relative distribution of liberal/conservative opinions for all cases, all case categories, and all case subcategories.

Distribution of Liberal/Conservative Frequencies

Step two looks at the frequency of opinions and percentage of liberal opinions for all cases, five categories of cases, and 21 subcategories. Liberalism was operationally defined for each case category in chapter two; however, the categories and subcategories will be briefly reviewed here, along with the operational definition of liberalism applicable to each of the five categories and to subcategories within each category.

The first category of opinions is criminal opinions. Liberal

criminal opinions are those which favor the criminal defendant. The subcategories are:

1. Federal habeas corpus cases
2. State habeas corpus cases
3. Procedural motions made immediately before, during, or after trial
4. Contempt of court
5. Conviction or non-conviction of a criminal charge.

The second category of opinions are class discrimination opinions. Liberal class discrimination opinions are those which favor the plaintiff in class discrimination suits. The class discrimination sub-categories are:

6. Alien petitions
7. Indian rights and law
8. Voting cases
9. Racial minority discrimination (includes petitions by black union members)
10. U.S. Civil Rights Act cases (not including cases of racial discrimination)
11. Military exclusion cases

The third category of opinions are freedom of expression opinions. Liberal freedom of expression opinions are defined as those which favor the individual. The freedom of expression sub-categories are:

12. Freedom of speech
13. Freedom of religion (includes conscientious objector cases)

The fourth category of opinions are labor relations opinions. Liberal labor relations opinions are those which favor the union or the worker against management and those which favor the union against the

worker. The labor relations subcategories are:

- 14. Union v Company
- 15. Union members v. Union
- 16. Employee v. Employer

The fifth category of opinions are economic regulation opinions.

Liberal economic regulation opinions are operationally defined as those which favor government regulation. The economic regulation subcategories are:

- 17. Commercial regulation (anti-trust; regulatory commissions)
- 18. Pure food and drug cases (includes consumer and environmental protection)
- 19. Local economic regulation
- 20. Labor cases involving Secretary of Labor, NLRB, and/or arising under the Fair Standards Act)
- 21. Rent control, excessive profit, price control.

As discussed in chapter two, these categories and subcategories are similar to those utilized by Goldman¹⁶ and Nagel.¹⁷ They include civil rights and labor sub-categories similar to those used by Richardson and Vines,¹⁸ and civil liberties categories used by T. Walker.¹⁹ Further, they are consistent with the economic and civil liberalism dimensions suggested by Glendon Schubert's studies of U.S. Supreme Court justices.²⁰ On the other hand, due to practical and methodological considerations noted in chapter two, the categories and subcategories utilized here cannot be considered replication of any earlier study. For example, more exact comparison is also limited by the thirty year time span of the current study.

Table four indicates the relative frequency and percentages of liberal and conservative opinions for all opinions in this data set. As indicated, most opinions in this data set are conservative. In fact, conservative opinions exceed liberal opinions by a 15 percent margin. This margin is not surprising; however, it does raise the question of whether this margin applies to all case categories and sub-categories. Table five indicates that it does not. This table indicates that substantial differences in the frequency of liberal opinions exist among categories and among sub-categories, both in the number of opinions and in the percentage of liberal opinions.

TABLE 4
Frequency of Liberal and Conservative Opinions For
All Cases (N=21,142)

	<u>N</u>	<u>Percent</u>
Liberal	8,973	42.5
Conservative	12,160	57.5
Missing	9	
	<u>21,142</u>	<u>100.0</u>

The most dramatic difference in the percentage of liberal opinions is between the two largest case categories--criminal and economic regulation. As indicated in Table 5, only 2.5 percent of the criminal opinions favor the defendant, while .63 percent of the economic regulation opinions favor government regulation. At first glance, this may seem to imply support for the association between Democratic opinion writers and liberal economic opinions which has been reported by several studies;²¹ after all, most of these opinions were written by Democrats and most economic opinions are liberal. However, a word of caution is

TABLE 5

Frequency of Liberal Opinions By Case Category
and Sub-Category

<u>Criminal</u>	<u>N=8260</u>	<u>% Liberal=25</u>
Habeas Corpus	1391	24
Habeas Corpus (state)	2897	21
Criminal Procedure Motions	3383	26
Contempt	55	26
Criminal Convictions	534	38
 <u>Class Discrimination</u>	 <u>N=3980</u>	 <u>% Liberal=45</u>
Alien	1437	39
Indian	156	47
Voting	217	47
Racial Exclusion	914	54
Civil Rights Act	1242	43
Military	14	43
 <u>Free Expression</u>	 <u>N=1347</u>	 <u>% Liberal=51</u>
Speech	852	51
Religion	495	52
 <u>Labor</u>	 <u>N=1773</u>	 <u>% Liberal=47</u>
Union v. Co.	979	47
Union v. Worker	268	62
Worker v. Co.	526	38
 <u>Economic Regulation</u>	 <u>N=5767</u>	 <u>% Liberal=63</u>
Commercial Regulation	2137	67
Food/Drug	415	64
Local Economic Regulation	504	66
Labor Regulation	1886	56
Rent/Profit/Price	824	61

X = .18

UC= .31

in order on at least two counts. First, most of these studies also associated Democratic opinion writers with liberal labor opinions, yet 53 percent of the labor opinions are conservative. Second, the low criminal liberalism and high economic liberalism both tend to reflect opinions favoring the state or federal government. Thus, the low criminal liberalism and high economic liberalism may merely reflect a common tendency for federal judges to support government litigants.²² This question will, of course, be addressed in greater detail below in step three.

It is also interesting to note that substantial differences exist among sub-categories within the Criminal and Labor categories. For example, more liberal opinions are issued in criminal conviction cases than in other criminal sub-categories. However, the most interesting example of sub-category variance occurs within the Labor category. Here the differences are partially the result of our operational definition--i.e., a decision for the union against the worker is classified as liberal. Yet, aside from liberal/conservative considerations, a fairly clear hierarchy emerges in which: 1) companies do very well against workers and fairly well against unions; 2) unions do very well against the individual worker but not very well against companies; and 3) the individual worker fares poorly against both union and corporate organizations. One need not be too cynical to suggest that a litigant's fate in labor cases may depend on the resources at his disposal.²³

The class discrimination and free expression categories fall fairly close to each other, although both are slightly above the liberal percentage for all cases (43 percent). Further, sub-categories within

both of these categories seem fairly consistent, with the exception of the racial exclusion and alien class discrimination sub-categories. The reasons for this are not apparent; however, they may relate to differences in both statutory and constitutional law applying to aliens and to racial minorities.²⁴ Alternatively, these differences may be accounted for by spatial or temporal variation uncovered in chapters five and six.

In sum, most opinions (43 percent) in this data set are conservative, but substantial variance occurs among case categories and sub-categories, in both the number of opinions and the frequency of liberal opinions. In twelve sub-categories, the modal opinion classification is conservative, while in nine sub-categories the modal classification is liberal. Therefore, by knowing only the sub-category involved, one can reduce error in predicting the liberal/conservative nature of an opinion by 18 percent ($\lambda=.18$). More general variance among sub-categories is even greater; thus, by knowing only the sub-category of an opinion, one can reduce uncertainty in predicting whether that opinion is liberal by 30 percent ($UC=.30$).

Having described the distribution of opinion-writer background characteristics and the distributions of liberal opinions, we are now in a position to undertake step three and examine the relationship between opinion writer background and the liberal/conservative nature of the opinion. Due to the small number of cases involved, the criminal contempt and military exclusion sub-categories will be omitted in step three.

Relationship Between Background of Opinion Writer and Liberal/ Conservative Nature of the Opinion

As noted in chapter two and in the introduction to this chapter, step three involved measuring the association between each of the opinion-writer background characteristics described in step one and the liberal/conservative nature of the opinion for all cases, each case category and each sub-category of cases. The associations are presented in tabular form. Lambda (λ) is used to measure the extent to which knowing the opinion writer's background works to reduce error in predicting the liberal/conservative nature of the opinion. An Uncertainty Coefficient (UC) is reported to indicate the extent to which knowing the opinion-writer's background acts to reduce uncertainty in predicting the liberal/conservative nature of the opinion. (See chapter two.)

Step three will be accomplished by examining each background characteristic and its associated hypothesis separately, in the following order:

1. Party Affiliation
2. Appointing President

Party Affiliation

Party affiliation is the first background variable to be tested. Party affiliation has not been linked to liberal opinions across all cases at the federal district court level. However, studies of other courts reviewed in chapter one, have found a weak but consistent link between Democratic party affiliation and liberal opinions. Thus, the following tentative hypothesis will be tested:²⁵

Hypothesis 3a: A higher proportion of opinions issued by Democrats than by Republicans will be liberal.

As indicated by table six, hypothesis 3a is supported, but very weakly.

TABLE 6

Association Between Opinion Writer's Political Party Affiliation and the Liberal/Conservative Nature of the Opinion-All Cases (N=19,798)

	% Liberal	% Conservative	
Democrats	44.4% (5426)	55.6% (6787)	61.7 (12,213)
Republicans	39.8% (3019)	60.2% (4566)	38.3 (7585)

$$\lambda^2 = .000$$

$$UC = .004$$

A higher percentage of opinions authored by Democrats are liberal, but the difference of 4.5 percent is almost trivial. Further, the modal category is conservative for both parties, resulting in a Lambda value of zero, and the reduction in uncertainty is trivial. At this point in the study, it is difficult to speculate as to the small disparity. However, both the nature of the U.S. party system and earlier studies would predict a greater inter party difference for certain case categories and sub-categories. Thus, the effect of party affiliation will be tested for each category and its sub-categories.

The first case category to be examined is the criminal category. No federal district court study has examined criminal cases; however,

Nagel has found Democrats to be slightly more liberal than Republicans at other levels.²⁶ Thus, the following hypothesis is tested:

Hypothesis 3b: Judges affiliated with the Democratic party will issue a higher percentage of liberal opinions in criminal cases, labor cases, and regulation cases than will judges affiliated with the Republican party.

Table seven indicates some support for the criminal component of this hypothesis. Democrats are slightly more likely to return a liberal opinion. However, the modal response for both categories is conservative and the difference reduces predictive uncertainty by a trivial amount. The between-party differences are particularly trivial for the motions sub-category. In all probability, this reflects the strategic and administrative²⁷ nature of many criminal defense motions. Differences are greater for the habeas corpus and conviction sub-categories suggesting some pro-defendant policy propensities on the part of Democratic opinion writers.

The next categories examined are the class discrimination and free expression categories. No federal district court study has focused on class discrimination and free expression as they are here defined. However, both Richardson and Vines and T. Walker examined cases which included many of the sub-categories within these two categories.²⁸ In his study of all federal district courts, Walker found no association between party affiliation and liberalism.²⁹ In their study of district courts in the third, fifth, and eighth circuits, Richardson and Vines found Republicans more likely to issue liberal civil rights opinions.³⁰ Given these mixed findings, no hypotheses are offered concerning the relationship between the opinion-writer's party affiliation and the

TABLE 7

Percentage of Liberal Opinions Returned by Judges of Each Political Party--
By Case Category and Sub-Category

<u>Criminal Cases*</u>	<u>Dem=28</u>	<u>Repub=22</u>	<u>Δ =+6</u>	<u>λ =0</u>	<u>UC=.004</u>
Habeas Corpus (Fed.)	27	17	10	0	.01
Habeas Corpus (State)	24	18	6	0	.004
Motions	28	25	3	0	.001
Conviction	43	32	11	0	.01
<u>Class Discrimination</u>	<u>Dem=48</u>	<u>Repub=40</u>	<u>Δ =8</u>	<u>λ =0</u>	<u>UC=.005</u>
Aliens	41	34	7	0	.004
Indians	48	48	0	0	0
Voting	45	49	-4	0	.001
Race	57	50	7	0	.003
Civil Rights	48	35	13	0	.01
<u>Free Expression</u>	<u>Dem=55</u>	<u>Repub=47</u>	<u>Δ =8</u>	<u>λ =.04</u>	<u>UC=.004</u>
Speech	54	48	6	.02	.02
Religion	55	45	10	.07	.007
<u>Labor Cases</u>	<u>Dem=49</u>	<u>Repub=45</u>	<u>Δ =4</u>	<u>λ =0</u>	<u>UC=.001</u>
Union v. Co.	49	46	3	0	.001
Union v. Worker	59	64	-5	.01	.001
Worker v. Co.	42	34	8	0	.005
<u>Regulation</u>	<u>Dem=63</u>	<u>Repub=61</u>	<u>Δ =2</u>	<u>λ =0</u>	<u>UC=0</u>
Economic	69	64	5	0	.003
Food/Drug	73	66	7	0	0
Local	71	58	13	0	.01
Labor	57	57	0	0	0
Rent/Profit	60	59	1	0	0

*Contempt and Military subcategories have been omitted due to small number of cases.

liberal/conservative nature of the opinion for civil rights cases.

Contrary to earlier findings, Democrats did return a higher percentage of liberal opinions for both case categories. The disparities are largest in cases involving aliens, racial exclusion, Civil Rights Act cases, and free speech cases. The disparities for race and civil rights tend to reflect recent decisions and may indicate support by Democrats on the bench for programs associated with the Democratic party-in-Congress.³¹ On the other hand, most voting opinions are also of recent vintage and are associated with Democratic programs and legislation. Yet, Republicans returned a higher percentage of liberal voting opinions. Since the Voting Rights Act of 1965 was directed at the South, most cases under this Act have originated in the Fifth Circuit. Thus, in all probability this difference reflects sectional differences which will be examined in chapter five.³²

Other studies at the federal and state appellate levels have consistently established that Democratic judges are more likely to return a liberal decision in labor and government regulation than are their Republican counterparts.³³ Thus, hypothesis 3b predicted that Democrats would return a higher percentage of liberal opinions than would Republicans in both labor and regulation cases.

As Table 7 indicates, this hypothesis receives very weak support. In fact, the party differences for both categories are too small to say with any confidence that they reflect actual party differences. The reasons for this are difficult to project; however, the small differences found here may reflect regional and temporal differences. Again, these differences will be examined in chapters five and six.

Some labor and regulation sub-category differences are particularly interesting. In cases pitting unions against the individual worker, a higher percentage of Republican authored opinions favored the union. This is somewhat surprising, given the close identification between labor and the Democratic party. As would be predicted, Republican opinions were more likely to favor companies against either unions or the individual worker. The only substantial between party difference in the regulation sub-categories lies in the larger percentage of Democratic opinions which favor local economic regulation. Yet, local economic regulation is a somewhat ambivalent sub-category which may involve feelings about state-federal relations as well as feelings about economic regulation. Thus, a southern states' rights advocate might favor local control for a very different reason than a strong advocate of government regulation.

In sum, with the opinion as the unit of analysis, the effect of an opinion-writer's party affiliation seems somewhat limited. There does, however, appear to be a weak but fairly consistent tendency for Democratic opinions to be more liberal and the between-party differences for selected sub-categories within each case category are fairly substantial. Given the relatively weak position of parties in the U.S. presidential political system, attention is now turned to the effects of appointing president. Particular attention will be paid to subcategories such as union v. worker cases in which surprising differences were found between parties.

Appointing Presidents

Other studies of the federal district courts have not systematically explored the president who appointed an opinion writer as a predictor of

the liberal/conservative nature of the opinion.³⁴ This is partially because of the limited time frame available for earlier studies. Nonetheless, the general role of the President in federal district judge selection and the ideological component of that selection process³⁵ dictate that we examine the effects of appointing president on the ideological content of the opinion. Given the paucity of the previous work and the congruence between the party affiliation of judges and their appointing president, the hypothesis to be tested will be limited to differences among opinions issued by Democratic and differences among opinions issued by Republicans. Before presenting and testing this hypothesis, differences among the appointees of all presidents from Harding to Nixon will be described. The same measures of association (λ and UC) will be used to measure the extent to which knowing an opinion writer's appointing president enables one to predict the liberal/conservative nature of the opinion.

Tables 8 and 9 report the percentage of liberal opinions issued by the appointees of each president since Harding which are liberal.

TABLE 8

Percentage of Opinions Which are Liberal by Opinion-Writer's Appointing President--All Cases

<u>President</u>	<u>NIX</u>	<u>LBJ</u>	<u>JFK</u>	<u>IKE</u>	<u>TRU</u>	<u>FDR</u>	<u>HOOV</u>	<u>COOL</u>	<u>HARD</u>	<u>$\lambda=.0$</u>
Liberal %	39	49	39	39	41	47	42	43	42	UC=.01

As indicated by Table 8, fairly substantial differences exist among presidents elected since the 1932 realignment, while differences before that time were virtually non-existent. Further, more substantial

differences exist among the opinions of Democratic appointees than among those of Republican appointees. Specifically, F. Roosevelt and Johnson appointees returned a higher percentage of liberal opinions than did the appointees of other presidents. It is particularly interesting to note the differences between these two and fellow Democrat John F. Kennedy. Kennedy appointees, in fact, return the same low percentage of liberal opinions (39 percent) as do Nixon and Eisenhower appointees.

These among president differences are interesting; however, before too much is made of them, at least two factors should be kept in mind. First, what appear to be differences among appointing president may merely be differences across time in environmental conditions, Supreme Court policy, or even legislation. Second, the unit of analysis is the opinion; thus, one cannot say that Kennedy appointees were as conservative as Nixon appointees. This does not mean, of course, that Kennedy appointees are as conservative as Nixon appointees. It may simply mean that Kennedy's more conservative appointments are prolific opinion writers. Thus, discussion of any unexpected conservatism among Kennedy will be postponed pending chapter four's analysis which will compare the mean liberal propensity of each president's appointees.

One can say, however, that 39 percent of the opinions issued by the appointees of both presidents were liberal.

Given the ideological or policy component in presidential judicial selection politics, among president differences may vary across case categories and sub-categories. Table 9 indicates that this is indeed the case. President Nixon's "get tough on criminals" policy position seems to be reflected in the differences between his appointees and

TABLE 9

Percentage of Opinions Which Are Liberal By Appointing President
for Each Category and Sub-category

	Percent Liberal										UC
	NIX	LBJ	JFK	IKE	TRU	FDR	HOOV	COOL	HARD	2	
<u>Criminal-All</u>	24	33	24	20	21	27	27	23	26	0	.01
Fed. Habeas Corpus	16	35	24	19	16	32	30	13	15	0	.03
State Habeas Corpus	19	30	23	17	16	14	15	14	26	0	.02
Motions	29	35	24	23	23	29	21	29	32	0	.01
Conviction	42	44	40	22	45	36	47	56	25	.01	.03
<u>Class Discrimination</u>	-44	60	39	40	42	44	27	51	34	.08	.02
Aliens	47	55	38	33	42	42	24	47	38	.01	.015
Indians	*	28	20	49	69	65	47	59	*	.18	.06
Voting	48	42	28	52	50	68	*	*	*	.11	.04
Racial	59	66	48	49	55	50	31	64	*	.05	.02
Civil Rights	38	59	36	34	27	33	*	*	*	.15	.05
<u>Free Expression</u>	43	64	54	47	44	45	40	35	39	.14	.02
Speech	38	64	49	51	46	46	43	31	46	.12	.02
Religion	50	66	61	39	41	43	33	*	*	.19	.04
<u>Labor</u>	43	53	53	45	50	36	43	40	48	.04	.01
Union v Co.	48	55	52	46	46	37	50	42	63	.05	.01
Union v Worker	50	57	59	65	79	44	*	*	*	.02	.03
Worker v Co.	26	44	49	32	46	32	30	38	35	0	.02
<u>Regulation</u>	56	71	70	69	66	59	55	52	50	.002	.01
Economic	60	73	72	68	66	69	61	54	56	0	.004
Food/Drug	57	64	61	76	71	64	54	59	43	.01	.02
Local Regulation	52	81	80	62	66	66	60	52	29	.04	.03
Labor	54	66	65	72	65	51	43	49	48	.01	.02
Rent/Profit	*	*	*	65	66	60	63	60	49	.01	.005

those of Lyndon Johnson. This is especially apparent in the habeas corpus sub-categories. However, on closer examination, it is the Johnson appointees who emerge as atypically liberal. In fact, Nixon appointees' liberal percentages are very close to those of most pre-Johnson appointees and tend to be higher than those of Eisenhower appointees. Again, this may reflect policy differences between the Burger Court, the Warren Court, and earlier Courts. If this is the case, the differences between Johnson and Kennedy appointees are particularly interesting, since a larger number of both Kennedy and Johnson appointees' opinions were returned during the tenure of the Warren Court. This possibility will be explored in chapter six under more rigorous controls for time.

Fairly dramatic among-president differences appear in the class discrimination category. First, with the exception of voting and Indian cases, Johnson appointees return a substantially higher percentage of liberal opinions than do the appointees of other presidents of either party. It is interesting to note that Nixon appointees have returned a higher percentage of liberal opinions than have Kennedy appointees in every class discrimination sub-category. With the exception of voting cases, Nixon appointees have also returned a higher percentage of liberal opinions than have the appointees of Eisenhower, Truman, or F. Roosevelt. This probably reflects the fact that all of the major civil rights legislation of the sixties was completed by the time of their appointment.

The Indian and voting sub-categories deserve special attention. The Indian figures are somewhat misleading since the number of cases has declined dramatically, as indicated by the absence of Indian opinions by Nixon appointees. However, the incidence of voting cases has

slowly but steadily increased since 1948. Yet, the among-president fluctuation is extreme and does not seem to follow either party lines or general among-president liberalism differences. The extremely low score for Kennedy appointees is particularly perplexing. Consideration of these differences will be expanded under controls for region and time in chapters five and six.

A somewhat different pattern emerges with freedom of expression cases. There appears to be a steady, accelerating, increase in the percent of opinions which are liberal from Coolidge through Johnson. Nixon appointees reverse this trend, returning only 43 percent liberal opinions. This trend and the Nixon reversal are apparent in both expression sub-categories. Again, it is difficult to determine to what extent this reflects the ideological choices in Nixon's appointment or a shift in guidance from the appellate courts. In chapter six, we will examine differences based on the year opinion was heard; however, the Burger Court shift in policy is itself a reflection of Nixon's appointments:³⁶ Thus, directly or indirectly, these data suggest that different policy propensities reflected in the Nixon appointee expression opinions can be at least partially attributed to Nixon's own appointment criteria.

In looking at among-president differences in the percentage of liberal labor opinions, several factors stand out. First, for the entire category, rather small differences are reflected among Truman, Eisenhower, Kennedy and Johnson appointees. Again, Nixon appointees return a lower percentage of liberal opinions, but Franklin Roosevelt's appointees return an even lower percentage, only 36 percent. In fact, Roosevelt's appointees return a lower percentage of liberal labor opinions than do

the appointees of Hoover, Coolidge, or Harding,

Given Roosevelt's identity with the realignment of urban blue collar workers into the Democratic party, this is puzzling. Part of the explanation may lie in the tendency of his appointees to follow precedent established by "the nine old men,"³⁷ regardless of their own, of their appointing president's, policy preferences. This possibility will be examined indirectly in chapter six by looking at differences across time which will allow for changes in Court policy during the long Roosevelt administration.

Looking at the sub-categories also offers some insight into the Roosevelt appointees' low percentage of liberal labor opinions. Roosevelt appointees returned a higher percentage of opinions favoring the worker against the union than did the appointees of any other president represented in this data set. The difference between Roosevelt and Truman appointees is particularly dramatic; however, the latter's high pro union score may reflect statutory changes epitomized by the passage of the Taft-Hartley Act in 1947. Since 1948, the appointees of each president have returned a gradually declining percentage of opinions favoring the union over the worker.

In cases involving disputes between union and company, Roosevelt appointees once again stand out. Slight differences appear among appointees of other presidents, largely on party lines. Yet, Roosevelt's appointees again return the lowest percentage of liberal opinions. The tendency of Roosevelt appointees to favor the employer is also apparent in cases pitting the worker against the company. Here, Roosevelt appointees behave very much like the pro-business appointees of Republican

presidents. In fact, only the appointees of Herbert Hoover and Richard Nixon return a lower percentage of pro-worker decisions in worker v. company disputes.

In sum, the low percentage of liberal labor opinions returned by Roosevelt appointees is difficult to explain. It may reflect adherence to precedent and to Supreme Court rulings before the "switch in time." However, how would one explain the higher percentages of liberal opinions returned by pre-Roosevelt appointees? Or perhaps important provisions of the Taft-Hartley Act in 1947 generated a shift reflected in Truman appointees. But again, how is one to explain the higher percentage of liberal labor opinions from pre-Roosevelt appointees? At least two possibilities remain. First, as will become apparent in chapter six, a relatively small number of labor cases were heard during the years in which Roosevelt appointees dominated the federal district courts; thus, a few prolific but conservative opinion-writers could generate a high percentage of opinions. This possibility will be explored in chapter four when opinions are aggregated by judge. Second, given the length of Roosevelt's tenure in office, these percentages may obscure important differences between early and late Roosevelt appointees. Thus, perhaps the behavior of Roosevelt's appointees changed after the "switch in time" or after the 1947 passage of the Taft-Hartley Act. These possibilities should be examined in future studies.

Roosevelt appointees generate no such surprises in the regulation category and sub-categories. In regulation opinions, the appointees of every president from Harding to Johnson display a gradually increasing

liberal tendency. As with freedom of expression cases, Nixon appointees reverse this trend. With some exceptions, this pattern is reflected in the local economic and labor regulation subcategories, with the shift between Johnson and Nixon appointees especially dramatic in local regulation cases.

Food and drug cases reflect an interesting pattern. The appointees of each president from Harding to Eisenhower issued an increasing percentage of liberal opinions, culminating with the high figure of 79 percent for Eisenhower's appointees. Since that time, the trend has been replaced by a declining percentage of liberal opinions. The reasons behind this pattern are not clear; however, the time study in chapter six should reveal the pattern in greater detail and facilitate reasoned speculation as to its causes and suggestions for future research.

In sum, Nixon, Johnson, and Roosevelt appointees seem to differ from the appointees of other presidents in certain types of cases. One might argue that presidential appointees tend to reflect the policy propensities of the appointing president in those policy areas central to the president's program. The behavior of Nixon appointees in criminal cases and Roosevelt appointees in regulation cases would seem to support this position. One might also argue that judicial selection is more salient to some presidents than to others and that the appointees of such presidents would more nearly reflect the president's policy views. Again, Nixon appointees appear to be a case in point,³⁸ as do Johnson appointees. However, Kennedy appointees do not seem to fit this pattern. Studies reveal an active role for Kennedy in the selection process and that both President Kennedy and the Attorney General placed heavy emphasis on

ideological or policy considerations. Civil rights were among the most important policy areas for the Kennedy Administration; yet, the opinions of Kennedy appointees do not reflect this.³⁹ The lack of consistency in among-president differences cannot be resolved at this point. However, the relatively large percentage of Kennedy appointee class discrimination opinions which are conservative is probably a function of the influence of conservative Democratic Senators in the appointment process. For example, Kennedy appointed at least one extreme racial conservative in Mississippi to satisfy Senator Eastland.⁴⁰ The rather substantial differences argue for more careful attention to these differences, both in the remainder of this work and in future studies.

As noted in the introduction, a secondary question addressed by this chapter is whether significant differences in the proportion of these opinions which are liberal exist among opinion writers appointed by presidents of the same party. The discussion of differences based on appointing president suggested that more variance occurs among the appointees of Democratic presidents than among the appointees of Republican presidents. Therefore, the following hypothesis will be tested:

Hypothesis 3c: Significant differences in the percentage of opinions which occur among appointees of presidents from the same political party.

To determine whether these differences are statistically significant, one must test among-president differences while controlling for the president's party. To do this, the opinions returned by the appointees of each president were treated as a sample of the population of opinions returned by appointees of that president's party. For example, the opinions issued by Johnson appointees were treated as a sample of the

population of the opinions issued by the appointees of all Democratic presidents. Then, the proportion of liberal opinions issued by each sample was compared to the population proportion. Finally a "Z" test statistic was computed to determine the statistical significance of differences between each sample proportion and its population proportion. (See Chapter Two.)

TABLE 10

Statistical Significance of Among-President Differences in Proportion of Appointees Opinions Which are Liberal, Controlling for Presidential Party Affiliation

<u>DEMOCRATS: P=.44</u>				<u>REPUBLICANS: P=.40</u>			
<u>President</u>	<u>% Liberal</u>	<u>Z</u>	<u>P (two tail)</u>	<u>President</u>	<u>% Liberal</u>	<u>Z</u>	<u>P (two tail)</u>
Johnson	49	6.05	.01	Nixon	39	.63	*
Kennedy	39	-5.87	.01	Eisenhower	39	1.28	*
Truman	41	-3.69	.01	Hoover	42	1.33	*
Roosevelt	47	3.33	.01	Coolidge	43	1.64	*
				Harding	42	.94	
Mean Deviation from P=/4.0/				Mean Deviation from P=/1.8/			
Mean Z score = 4.73				Mean Z score = 1.16			
				*Not significant at .05 level			

As indicated by Table 10, hypothesis 3c is confirmed only for Democrats. The differences among Democratic appointees are indeed significant, while differences among Republican appointees are not. In fact, one can argue that in studies with the opinion as the unit of analysis it is incorrect to treat each Democratic president's appointees as a sample of the population of Democratic presidential appointees. Rather, the

large Z scores and high levels of significance argue that each president's appointees represent a separate population. Republican presidents' appointees, on the other hand, cannot be said to represent separate populations. This is particularly interesting given the longer time span from which Republican samples are drawn.

To this writer, the differences indicated in Table 9 suggest that attempts to associate judicial liberalism with party on federal district courts may fail because Democratic appointees represent several populations defined by appointing president rather than a single population defined as Democrat. However, this suggestion raises the question of whether opposite party appointees account for some among-president variance in proportion of liberal opinions.

Opposite Party Appointments

As indicated in the description of opinion writer background, a relatively small number of opinions (N=1127) in this 30-year data set were returned by judges not affiliated with the party of their appointing president. Yet fully 10 percent of Republican opinions were written by judges appointed by Democrat presidents. Further, substantial differences occurred among presidents. Eleven percent of the opinions issued by Kennedy appointees were by Republicans, while almost 14 percent of the opinions issued by Hoover appointees were by Democrats. Thus, while the number of opinions is small, opposite party appointments have the potential to effect the relationships explored between liberal opinions and both party affiliation and appointing president.

Each party's percentage of opinions which are liberal for within party appointments and for opposite party appointments is presented for

all cases in Table 11.

Table 11 indicates that for all cases Democrats appointed by presidents of either party and Republicans appointed by Democrats return the same (44 percent) percentage of liberal opinions. Only Republicans appointed by Republicans are deviant, returning only 39 percent liberal opinions. The question of whether these similarities and differences apply across all case categories and sub-categories is difficult to examine, given the relatively small number of cases. In fact, attempts to do so in the aggregate would be misleading, especially for Democrats appointed by Republicans (N=340). Nonetheless, these findings seem to suggest that future studies should consider the possibility that the Republican appointees of Democratic presidents may differ from their Republican colleagues appointed by Republican presidents.

TABLE 11

Comparison of Percentage of Opinions Which are Liberal for Within Party Appointees and for Opposite Party Appointees--All Cases

Percentage of Liberal Opinions Written by Appointees of Democratic Presidents		Percentage of Liberal Opinions Written by Appointees of Republican Presidents	
<u>Democrats</u>	<u>Republicans</u>	<u>Democrats</u>	<u>Republicans</u>
44%	44%	44%	39%

Length of Federal Judicial Experience

The final relationship to be explored is that between opinion writer federal bench experience and the liberal or conservative nature

of the opinion. As noted in chapter one, earlier studies have suggested that judicial conservatism is associated with both increasing age⁴¹ and with prior judicial experience.⁴² Thus, the following hypothesis will be tested:

Hypothesis 3d: The frequency of liberal opinions will decrease as the federal judicial experience of the opinion-writer increases.

Hypothesis 3d is tested for all cases by plotting percentage of liberal opinions against years of federal judicial experience in figure two. A univariate graph of the percentage of liberal opinions by the tenure of the opinion-writer is presented for all cases in figure two.

As with other tests of association, the Lambda and Uncertainty Coefficient measures are reported to indicate the reduction in predictive error and uncertainty gained by knowing the opinion-writer's years of federal bench experience.

Figure two presents an interesting pattern. The percentage of opinions which are liberal appears to increase as judicial tenure increases from less than one year to four years. A steady decrease in the percentage of opinions which are liberal occurs from the fifth through the tenth year of judicial tenure. After the tenth year, fluctuations in the percentage of opinions which are liberal fluctuate in an almost random fashion. Thus, these data suggest that liberalism gradually increases during a judge's first five years on the bench, decreases during his second five years and stabilizes after ten years. The general pattern of decline suggests weak support for hypothesis 3d for all opinions.

While judicial tenure is a very indirect reflection of age, tenure and age do increase simultaneously. These findings may, therefore, be

Liberal/Conservative Nature of Opinion by Opinion
Writer's Years Experience as Federal Judge

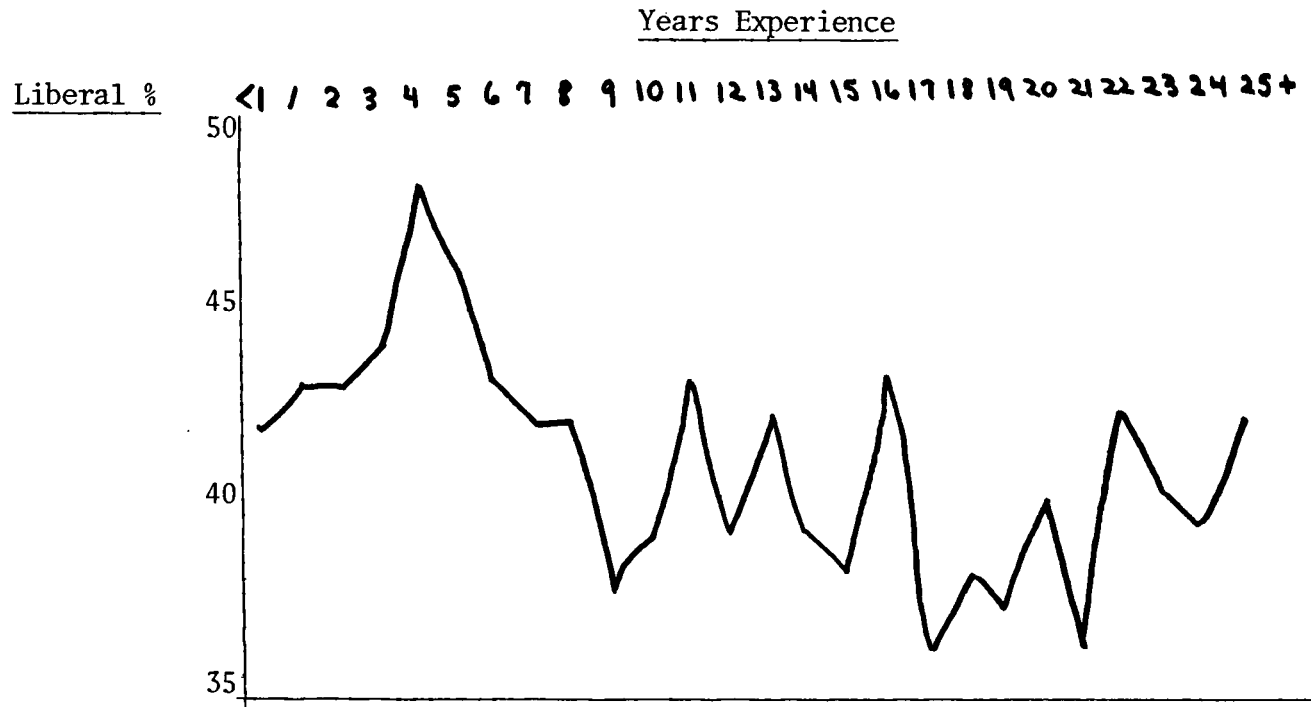


FIGURE 2

compared to the findings by Goldman and by Lamb that Appeals Court Judges tend to be more conservative than their younger counterparts. The comparison is mixed--i.e., the initial increase in liberal opinions contradicts both Goldman and Lamb, but the decline after five years supports both authors. Neither Goldman nor Lamb reported shifts in the relationship between age and the percentage of liberal opinions by year. Thus, even with the initial five year increase, the overall relationship reported here tends to support both authors. Goldman found the relationship and judicial conservatism strongest for non economic case categories; therefore, figure 3c reports the relationship between opinion writer tenure and the percentage of opinions which are liberal for economic (labor, Economic Regulation) and for non economic (Criminal, class discrimination, and freedom of expression cases).

Hypothesis 3d may be accepted for both economic and non-economic categories. The pattern for non-economic opinions is remarkably similar to the pattern for all opinions. Liberalism increases until the fifth year at which point the conservative trend begins. However, the conservative trend is more prolonged for non-economic patterns than for all opinions. Thus, Goldman's findings at the Appeals Court level are largely replicated here at the federal district court level.

The pattern for economic cases is less stable. Further, instability tends to increase as tenure increases. There is, however, a discernible negative relationship between judicial tenure and the percentage of opinions which are liberal.

In sum, the evidence here suggests an initial increasing tendency to issue liberal opinions followed by a decreasing tendency to issue

FIGURE 3

103

Tenure (in years)

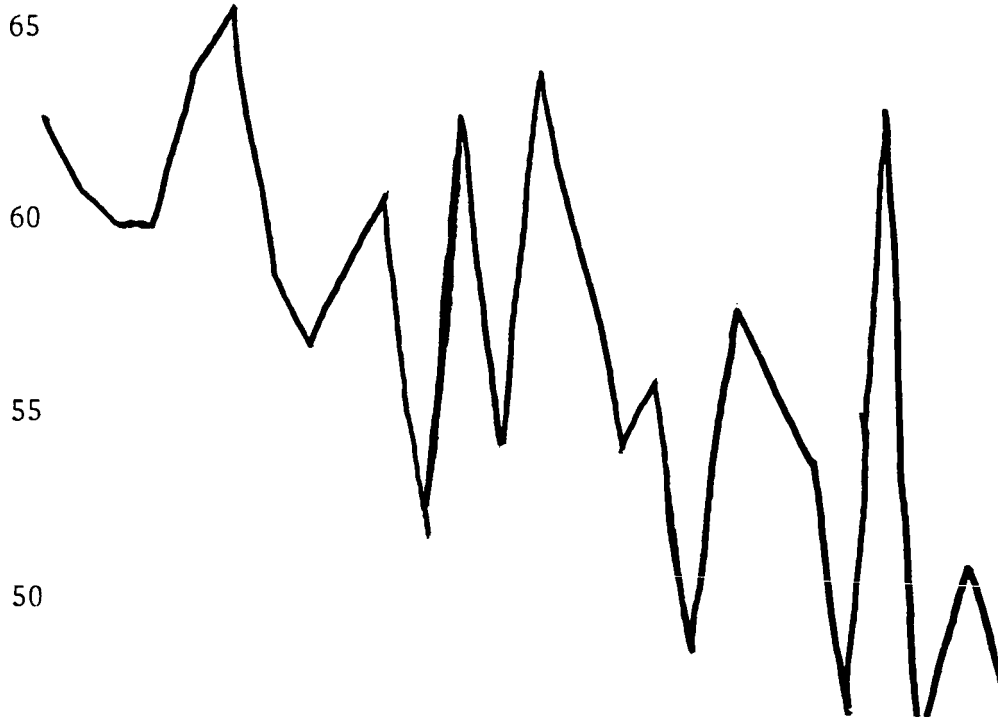
%
Liberal

< 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Non-Economic Cases



Economic Cases



liberal opinions as federal judicial experience increases. As would be predicted by Goldman's work, this pattern is most apparent in non economic cases. However, one must be cautious in interpreting these patterns for several reasons. First, the potential tenure for recent appointees is limited. For example, no Nixon appointee can have more than four years tenure. Thus, one cannot be sure that tenure is not a surrogate for appointing president in some cases. Given the high frequency of conservative opinions returned by Nixon appointees, this possibility is unlikely; however, future studies should trace the relationship between opinion-writer tenure and the percentage of liberal opinions while controlling for extraneous variables such as appointing president. Additionally, future studies should examine the effects of other variables, such as party identification under controls for tenure and more specific controls for case type. For example, the effects of party affiliation may be stronger earlier in a judge's career and more important for party related issues such as civil rights.

Second, it is difficult to know whether the patterns reported here are a function of experience or of age. Future studies should, therefore, control for age of the opinion writer.

Finally, since experience is calculated by subtracting the year an opinion was returned from the year an opinion-writer was appointed, either of these time measures may be reflected in the judicial experience trend. The effects of the year an opinion is returned are examined in chapter six. Future studies should examine the effects of the year a judge is appointed.

¹See Sheldon Goldman, "Characteristics of Eisenhower and Kennedy Appointees to the Lower Federal Courts," Western Political Quarterly (1965), pp. 755-62; Joel B. Grossman, "Social Backgrounds and Judicial Decisions: Notes for a Theory" Journal of Politics XXIX (May, 1967), p. 336.

²Ibid.

³In particular, see Sheldon Goldman, "Voting Behavior on the United States Courts of Appeals Revisited," American Political Science Review, Vol. 69, (1975) pp. 491-506 and Stuart Nagel, "Political Party Affiliation and Judges' Decisions," American Political Science Review, Vol. 55 (1961), p. 843.

⁴See Goldman, op. cit. Also, Kenneth Dolbeare, "The Federal District Courts and Urban Public Policy: An Exploratory Study," in J. Grossman and J. Tanenhaus (eds.) Frontiers of Judicial Research (John Wiley and Sons, 1969), pp. 373-404. Also see Nagel, op. cit.

⁵For a discussion of this, see Walter Dean Burnham, Critical Elections and the Mainsprings of American Politics (New York: Norton, 1970).

⁶See Donald D. Jackson, Judges (New York: Antheneum, 1974).

⁷All 1972 appointees had, of course, served less than 12 months at the end of 1972.

⁸See Sheldon Goldman, "Voting Behavior on the United States Courts of Appeals: 1961-64," American Political Science Review, Vol. 60 (June, 1966), pp. 370-85. Also see Richardson and Kenneth Vines, The Politics of Federal Courts (Boston: Little, Brown and Co., 1970), pp.

⁹Ibid.

¹⁰Ibid.

¹¹See Jackson, p. 30.

¹²In fact analysis will indicate that Nixon appointed a relatively large percentage of Democrats.

¹⁴See David Brady, "Inter-Party Competition and Voting in a Competitive Era," American Political Science Review (March, 1973). For a summary of the link between party affiliation and the congressional vote, see Malcom Jewell and Samuel Patterson, The Legislative Process in the United States (New York: Random House, 1976). Most recently, see Barbara D. Sinclair, "Who Wins in the House of Representatives: The Effect of Declining Party Cohesion on Policy Outputs, 1959-1970," Social Science Quarterly, Vol. 58, #1, June, 1977, pp. 121-128.

¹⁵Ibid. In particular, see Sinclair.

¹⁶Goldman, 1975.

¹⁷Nagel, op. cit.

¹⁸Richardson and Vines, op. cit.

¹⁹Thomas Walkter, "A Note Concerning Partisan Influences on Trial Judge Decision-Making," Law and Society Review, Vol. 6 (May, 1972), pp. 645-9.

²⁰See Glendon Schubert, Judicial Mind Revisited (New York: Oxford University Press, 1974).

²¹See Nagel, op. cit.; Goldman, op. cit.

²²See Martin Shapiro, The Supreme Court and Administrative Agencies (New York: Free Press, 1968).

²³Of course, success in court is often a function of ones resources in other cases as well. See Herbert Jacob, Justice in America (Boston: Little, Brown and Co., 1972).

²⁴For example, decisions in racial exclusion cases would be guided at least partially by the Civil Rights Acts of 1964 and 1968.

²⁵As noted in chapter two, this is not hypothesis testing in the formal sense of generalization from a sample to the population.

²⁶Stuart Nagel, "Backgrounds and Criminal Cases," Journal of Criminal Law, Criminology and Police Science, Vol. 53 (1962), pp. 333-9.

²⁷Recently, see James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little, Brown and Co., 1977). For an excellent earlier effort, see Abraham S. Blumberg, Criminal Justice (Chicago: Quadrangle Books, 1967).

²⁸Richardson and Vines, op. cit., T. Walker, op. cit.

²⁹Walker, p. 649.

³⁰Richardson and Vines, p. 172.

³¹This term is adopted from Frank Sarouf, Party Politics in America (Boston: Little, Brown and Co., 1976) to distinguish party affiliates from the party in the electorate.

³²The Voting Rights Act of 1970 was expanded to include Texas-Mexican Americans. This too may be reflected in these results.

³³See Nagel, 1961; Richardson and Vines, op. cit., Goldman, 1975.

³⁴Several studies have, however, discussed differences between appointees of different presidents. See, Goldman, op. cit.; Richardson and Vines, op. cit.

³⁵In particular, see Harold Chase, Federal Judges: The Appointing Process (Minneapolis: University of Minnesota Press, 1972).

³⁶Jackson, op. cit.

³⁷The policy propensity of the pre 1937 court are outlined in Robert G. McClosky, The American Supreme Court (Chicago: University of Chicago Press, 1960).

³⁸Two excellent if somewhat biased accounts of Nixon's efforts to achieve policy goals through judicial appointments are available. See Leonard W. Levy, Against the Law: The Nixon Court and Criminal Justice (New York: Harper and Row, 1974); and James F. Simon, In His Own Image: The Supreme Court in Richard Nixon's America (New York: McKay, 1973). In general, see Sheldon Goldman and Thomas P. Jahnige, The Federal Courts As A Political System (New York: Harper & Row, 1976), Chapter Three.

³⁹Sheldon Goldman, "Judicial Appointments to the United States Courts of Appeals," Wisconsin Law Review, (1967), pp. 186-214.

⁴⁰See Goldman, 1967; Chase, op. cit.

⁴¹See Goldman, 1975; Charles M. Lamb, "Exploring the Conservatism of Federal Appeals Court Judges," Indiana Law Journal, Vol. 51, #2 (Winter, 1976), pp. 257-279.

⁴²Ibid.

CHAPTER FOUR

Differences in Liberal Propensity Among Opinion Writers

Chapter four explores the relationship between opinion writer background characteristics and opinion-writer liberal propensity. Chapter three reported the following information: the distribution of opinion-writer background characteristics; the distribution of liberal opinions; and the relationship between the liberalism of an opinion and its writer's political party affiliation, appointing president, and federal judicial tenure. A majority of the opinions returned by both Democrats and Republicans were conservative. However, in some case categories and sub-categories the majority of opinions were liberal. Further, a larger percentage of opinions by Democrats were liberal than were opinions issued by Republicans.

Chapter three's findings seem to suggest that Democratic federal district judges tend to be less conservative (more liberal) than are their Republican counterparts. However, in chapter one, early studies of federal district courts were criticized for generalizing to the behavioral propensities of judges from the study of judicial opinions. Three general criticisms were offered:

- 1) Opinions may or may not be typical of judicial decisions. It is a mistake, therefore, to treat a set of opinions as a sample of a population of decisions.

- 2) Likewise, opinion writers may not be typical of federal judges. A minority of judges write a majority of the opinions issued from federal district courts each year.¹ Some judges may not issue formal opinions

at all.

3) One may not even be justified in generalizing the association between the liberal/conservative nature of opinions and the background of opinion writers to the population of opinion writers unless each judge writes the same number of opinions. Otherwise, a few judges returning a large number of opinions can distort the general relationship between a background characteristic and opinion-writer policy propensities. For example, a prolific liberal Republican like the Hon. Frank Johnson in Alabama could lead opinion based research to the conclusion that Southern Republican judges are liberal or that Alabama judges are liberal, neither of which is necessarily true. Given these criticisms, chapter three's findings may or may not be applicable to federal district judges in general or even to the set of opinion writers who issued the opinions on which its findings were based. This possibility may be tested by measuring the same distributions and relationships studied in chapter three but focusing on the opinion writer, rather than the opinion, as the unit of analysis. Thus, chapter four addresses two related questions:

1) What is the association between opinion writer background characteristics and variance in opinion writer liberal propensity?

2) To what extent can findings based on the opinion as the unit of analysis be replicated in a study using the same data but focusing on the judge as the unit of analysis?

In order to address these questions, all of the opinions issued by each judge were aggregated as a unit and each judge was assigned a liberal propensity score equal to the percentage of his opinions which

liberal. This aggregation reduced the data set from 21,142 opinions to 871 opinion writers. (See chapter two.) The task, then, is to describe the distribution of aggregated opinion writer background characteristics, to describe the distribution of liberal propensity scores and to measure the association between differences in background characteristics and variance in liberal propensity.

To facilitate comparison, chapter four will proceed in five steps, with the first three steps paralleling the analysis in chapter three:

- 1) Step one is a description of aggregated judicial background characteristics and a comparison with those same characteristics as reported in chapter three.
- 2) Step two is a description of the distribution of liberal propensity and a comparison of this distribution with the distribution of liberal opinions reported in chapter three.
- 3) Step three is a measure of the differences in liberal propensity means among groups defined by differences in background characteristics and a comparison with the differences in percentage of liberal opinions reported in chapter three.
- 4) Step four is a measure of the extent to which among judges differences in background characteristics explain variance in opinion writers' liberal propensity scores.

Finally, step five summarizes and draws conclusions from the findings presented in the first four steps. In step five, attention will be called to similarities and differences between the findings of chapter three and the findings of chapter four; more importantly, the implications of this comparison for future studies of the lower federal courts will be discussed.

While the basic questions addressed by this chapter are quite similar to those in chapter three, the shift in the unit of analysis and

aggregation by judge has wrought at least two important changes. First, liberal propensity is an interval level variable which facilitates more sophisticated description and measures of association. Second, the reduction in units of analysis from 21,142 to 871 necessitates a reduction in the number of categories and sub-categories. The implications of both changes are discussed as part of the methodology associated with each step below.

Step One: Description of Opinion-Writer Background Characteristics

In chapter three, the frequency and percentage of opinions written were described by party affiliation, appointing president, opposite party appointees, and tenure as a federal judge. In the description which follows, federal judicial experience must be omitted since its computation was based on the date the opinion was returned.² Thus, three background characteristics will be described: political party affiliation, appointing president and opposite party appointees. Rather than the frequency of opinions issued by judges in each background category, this section reports the frequency of opinion writers in each background category. As in chapter three, the first background characteristic to be explored is political party affiliation.

Political Party Affiliation

The distribution of opinion-writers between Democrats and Republicans is presented in Table 4(a).

As indicated, the distribution of opinion writers is somewhat different from chapter three's distribution of opinions. While Democrats returned 62 percent of the opinions, they make up only 55 percent of

TABLE 4(a)

Party Affiliation of Opinion-writers

	<u>N</u>	<u>Opinion writer Percentage</u>	<u>Opinion* Percentage</u>	<u>Opinion[†] Δ</u>
Democrats	462	55	62	+7
Republicans	372	45	38	-7
Unknown	<u>37</u>	<u>-</u>		
	871	100		

*Percentage of opinions which were written by Democrats

†Difference between percentage of opinions which were written by Democrats and percentage of opinion writers who are Democrats.

the opinion writers, suggesting a higher propensity to issue opinions for Democrats in this data set. However, this seven percent difference may simply indicate that Democrats have had more opportunity to issue opinions during the post-1932 Democratic era. More specifically, it may reflect the lack of opportunity to issue opinions for Nixon appointees. This possibility is addressed by describing the distribution of opinion writers by appointing president.

Appointing President

The distribution of opinion writers among appointing presidents is presented in Table 4(b).

The frequency of opinion writers by appointing president is fairly evenly distributed for each president since Franklin Roosevelt. However, Nixon's 133 appointments occurred in less than four years, giving him a higher rate of appointment than Roosevelt. This is consistent with

TABLE 4(b)

Opinion Writer Appointments and Opinion Frequency by Appointing President (N=858)

President	Republicans (N=378)				President	Democrats (N=480)			
	N of Op. Wr.	% of Op. Wr.	Op. %	Op. Δ		N of Op. Wr.	% of Op. Wr.	Op. %	Op. Δ
Nixon	133	15	5	+10	Johnson	127	15	17	-2
Eisenhower	129	15	19	- 4	Kennedy	99	11	16	-5
Hoover	47	5	5	-	Truman	107	12	18	-6
Coolidge	48	4	3	+ 1	F.Roosevelt	133	15	15	-
Harding	24	3	3	-	W. Wilson	14	2		
T. Roosevelt	4	1	-	-					
Taft	3	1							
All Repub.	378	.44	.35		All Democ.	480	.56	.65	

(Missing=13)

the large number of federal judges appointed by Nixon.³ Likewise, Kennedy's 99 appointments occurred in less than three years, giving him a high appointment rate.

As indicated in Table 4(b), some fairly substantial differences occur between the distribution of opinions by appointing president and the distribution of opinion writers by appointing president. The most obvious difference occurs in comparing the relative place of Nixon appointees. While Nixon appointees returned only 4.6 percent of the 21,142 opinions, they make up fully 15 percent of the 871 opinion writers. If one projects Nixon opinion writer appointments beyond 1972, Nixon appointees will surely exceed those of Franklin Roosevelt.

The data presented in Table 4(b) do not necessarily suggest that opinion writing propensity is evenly distributed among individual judges or even among the individual appointees of different presidents. In fact, data beyond the scope of the question addressed by this dissertation indicate that opinion writing propensity varies substantially by appointing president and by time of appointment.⁴ They do suggest that, in the aggregate, opinion writing propensity is fairly evenly distributed among groups defined by appointing president. Disparities between each president's percentage of opinions and his percentage of opinion writers tend to decline over time. In fact, the disparities largely disappear for earlier presidents. For Harding, Hoover, and F. Roosevelt, no disparity exists. If this study were extended into the future, one would expect each past president's percentage of the opinion writers to decline rapidly, while each president's percentage of the opinions would decline at a slower rate as his appointees retire or die and the appointees of more recent presidents add to their number of opinions.

While opinion-writing propensity appears to be evenly distributed across groups defined by appointing president, opinion-writing opportunity is not evenly distributed, as is reflected in the disparity between the number of opinions by Nixon appointees and the percentage of opinion writers appointed by Nixon. Therefore, there seems to be some validity in generalizing from aggregates of opinions to aggregates of opinion writers' backgrounds for groups of judges no longer on the bench; but this same generalization does not seem justified for

aggregates of judges currently seated. The question of opposite party opinion writer appointments is addressed next.

Opposite Party Appointments

Aggregation by judge has reduced the opposite party category from 127 opinions to 53 opinion writers. As indicated by Table 4(c), 28 Democrats were appointed by Republicans, while only 25 Republican opinion writers were appointed by Democrats. Thus, fifty three percent of all opposite party opinion writers are Democrats appointed by Republicans. This represents a substantial departure from chapter three in which only .30 percent of the opinions written by opposite party appointees were written by Democrats appointed by a Republican president.

TABLE 4(c)

Opposite Party Appointments by Party of Appointee

Democrats Appointed by Republicans			Republicans Appointed by Democrats		
	Op. Wr.	Opinions		Op. Wr.	Opinions
N	28	390	N	25	787
% by Rep. App.	.07	.05	% by Dem. App.	.05	.06
% by Dem. Aff.	.06	.03	% by Rep. Aff.	.07	.10

Further, the percentage of Republican opinions written by Democratic presidential appointees is 10 percent, while only seven percent of Republican opinion writers were appointed by Democratic presidents.

These disparities indicate two things. First, where a small number of cases is involved, generalization from opinion to opinion writer is particularly precarious. Second, Republicans appointed by Democrats have returned an average of only 12.1 opinions, compared to a population

average of 24.3 opinions.

The disparity between the two groups would seem to indicate that Democratic appointees of Republican presidents have a much higher propensity to issue opinions than do Republicans appointed by Democrats. However, Table 4(d) indicates that opportunity rather than propensity may account for the disparity. Specifically, Nixon's 11 Democratic nominees make up fully 41 percent of the Democrats appointed by Republicans. And these Democrats, like other Nixon appointees, have had relatively little time to issue opinions. In fact, each Nixon Democrat has averaged only about five (56/11) opinions while Kennedy and Johnson Republicans had averaged over 35 opinions. The number of opinions by Nixon appointees will grow; however, for now the disparity between number of opinions by opposite party appointees and the number of opposite party appointees writing opinions seems to be largely a function of the lack of opportunity for Nixon Democrats. Nonetheless, any generalizations from recent opposite party opinion writers would be hazardous.

Summary-Opinion Writer Backgrounds

Most opinion writers are Democrats and most opinions are written by Democrats; however, disparities exist between the Democratic percentage of opinions and the Democratic percentage of opinion writers. The disparities are even larger for opposite party appointments; in fact, only thirty percent of opposite party opinions were issued by Democrats while fifty three percent of opposite party appointees are Democrats appointed by Republicans. Disparities between percentage of opinions and percentage of opinion-writers for groups defined by appointing

TABLE 4(d)

Opposite Party Appointments by Party of Appointing President

President	REPUBLICANS				President	DEMOCRATS			
	Opinion Writers		Opinions			Opinion Writers		Opinions	
	N of Democrats	% of President's Appointees	N by Democrats	% of President's Opinions		N of Repubs.	% of President's Appointees	% by Repubs.	% of Pres. Opinions
Nixon	11	8.3	56	5.8	Johnson	8	6.3	225	6.2
Eisenhower	4	3.7	88	2.2	Kennedy	10	10.1	374	11.4
Hoover	8	17.7	144	13.7	Truman	7	6.5	188	6.6
Coolidge	2	5.2	5	.8	F.Roosevelt	0	-	-	-
Harding	2	8.3	43	8.0					

\bar{X} opinions written by opposite party appointees = 21.6

\bar{X} for all opinion writers = 24.3

president suggest that these disparities may be a function of the lack of opportunity for recent Nixon appointees to issue opinions. Nixon appointees issued less than five percent of the 21,141 opinions but made up 15 percent of the 871 opinion writers, while Roosevelt appointees issued fifteen percent of the opinions and made up 15 percent of the opinion writers. Thus, generalization from opinions to the distribution of aggregated opinion writer backgrounds may be valid for groups who have largely exhausted their opportunity to issue opinions but this same generalization does not seem warranted for active judges.

Step Two: Distribution of Liberal Propensity

As noted in the introduction to this chapter and outlined in detail in chapter two, each opinion-writer has been assigned a liberal propensity score equal to the percentage of that judge's opinions which are liberal as operationally defined in chapter two. Each judge has been assigned a liberal propensity score for all cases equal to the percentage of all his opinions which are liberal. Due to the data reduction inherent in aggregating opinions by opinion writer, it is not possible to assign each judge a liberal propensity score for each subcategory. Further, indications in chapter three of major intra category differences indicated that simple aggregation by case category, while convenient, might produce misleading results. Thus, the following five liberal propensity case categories were developed:

1) Propensity to Support Criminal Defendants (PSCD): The federal habeas corpus, state habeas corpus, and criminal conviction subcategories were combined into this category. The "motions" subcategory

was omitted because of the ambiguity surrounding the liberal/conservative nature of procedural motions in criminal trials. The "contempt" subcategory was omitted because it involved only a trivial number of cases. Thus, each of the 608 judges who issued one or more habeas corpus or criminal conviction opinions was assigned a Criminal Support Liberal Propensity (CSLP) score equal to the percentage of these opinions which favored the defendant.

2) Class Discrimination Propensity (CDP): The alien, racial exclusion and civil rights subcategories were combined to produce the CDP category. Indian cases were omitted because of the small number of cases, the lack of visible party differences and because they tend to be concentrated in a few isolated geographical areas. Voting cases were omitted from this general category because the findings in chapter three suggest that the voting subcategory should be analyzed separately from other class discrimination subcategories. Unfortunately, the number of judges returning voting opinions in this data set was not large enough to aggregate these opinions by opinion writer into a separate category. Thus, each of the 641 judges who have issued one or more alien, race exclusion or civil rights opinions was assigned a Class Discrimination Liberal Propensity (CDLP) score equal to the percentage of these opinions which are liberal.

3) Support for Freedom of Expression (SFE): The Expression case category was retained intact as the SFE category. Thus, each of the 467 judges who have issued one or more freedom of speech or freedom of religion opinions were assigned a Freedom of Expression Liberal Propensity (FELP) score equal to the percentage of these opinions which

favor individual expression.

Pro-Labor Propensity (PLP): The union v. company and worker v. company subcategories were combined to produce the PLP category. Union v. worker cases were omitted because no clear underdog exists and because of the inherent ambiguity involved in defining liberalism for cases in which the judge must decide between organized labor and the individual employee. (See chapter three.) Thus, each of the 484 judges who have issued one or more opinions in cases pitting unions or individual workers against a company were assigned a Labor Liberal Propensity (LLP) score equal to the percentage of these opinions which favor either organized labor or the individual employee over the employer.

State and Local Economic Regulation Support Propensity (SLERSP): Only one economic regulation subcategory suggested any substantial differences between Democratic and Republican judges; therefore, only Local Economic Regulation was aggregated by opinion writer. The other subcategories will be examined for the influence of time differences, such as the effects of World War II on price control cases, in chapter six. However, only SLERSP cases will be aggregated by opinion writer and related to opinion writer background characteristics. Thus, each of the 305 judges who returned local economic regulation opinions will be assigned a Local Economic Regulation Liberal Propensity (LERLP) score equal to the percentage of these opinions which favor local economic regulation.

These five categories hardly exhaust the possibilities for aggregation by opinion-writer. For example, state habeas corpus opinions and local economic regulation opinions might be combined into a "local

initiative" category. Likewise, certain subcategories such as racial exclusion might be treated separately. Hopefully, future efforts will include the application of techniques such as alpha factor analysis to establish underlying liberal/conservative dimensions and define categories analytically.⁵ However, these categories are consistent with the nature and goals of the research reported here--i.e., they facilitate broad exploration and serve as heuristic devices to generate questions for future research.

Thus, the among-judge distribution of liberal propensity will be reported for all opinion-writers and for those judges writing opinions in each of five aggregated categories of cases. For all opinions and for each aggregated category of opinions, the number of opinion-writers, the mean liberal propensity score, and the standard deviation of liberal propensity scores are reported in Table 4e below. Table 4e also indicates the percentages of opinions which were liberal in these same combinations of case subcategories.

TABLE 4(e)

Opinion Writer Liberal Propensity for all Opinions and for
Aggregated Case Categories

	N of Opinion-Writers	Mean Liberal Prop.	Standard Deviation	Prop. of Op. Which were Lib.	Which Δ
ALL	871	46	24	43	+3
CSLP	608	29	32	25	+4
CDLP	641	44	35	45	-1
FELP	467	46	40	51	-5
LLP	484	43	39	51	-8
SLERLP	305	67	42	66	+1

Two aspects of the propensity distribution reported in Table 4e stand out. First the means and proportions are quite similar, with the exception of labor cases. Thus, generalization from proportion of opinions which are liberal to opinion-writer liberal propensity may be misleading only in labor cases. This possibility will be examined more closely under controls for jurisdiction and time in chapters five and six. Second, the standard deviations are quite large relative to the mean scores, indicating a great deal of variance around the mean. In fact, for criminal cases, the standard deviation is larger than the mean. However, the possibility exists that both the mean scores and the large standard deviations are partially a function of a tendency for many judges to return only one opinion in each category. These judges' liberal propensity scores would each equal either 100 or zero and be based on a single opinion. To test for this possibility, liberal propensity scores were recomputed only for those judges who have returned two or more opinions. The results are presented in table 4(f).

TABLE 4(f)

Opinion-Writer Liberal Propensity for all Opinions and for
Aggregated Case Categories Where Number of Opinions ≥ 2

	N of Opinion-Writers	Mean Liberal Propensity	Standard Deviation
ALL	807	45	21
CSLP	472	28	26
CDLP	491	45	30
FELP	284	50	32
LLP	305	44	31
SLERLP	112	67	33

The comparison is interesting. Changes in the mean liberal propensity are small with the exception of Expression Liberal Propensity, indicating a fairly even distribution of scores at the upper and lower extremes. However, the changes in both the number of opinion writers and the standard deviations are substantial for all cases and for each case category. The difference in the number of opinion writers indicates that a large number of opinion-writer liberal propensity scores are based on a single opinion and therefore equal to either 100 or zero. The removal of scores from both extremes is reflected in the substantial reductions in standard deviation for all cases and for each category. Both reduction in number of opinion-writers and reduction in standard deviation fluctuate among case categories. As would be expected, the two are positively related; that is, the greater the reduction in the number of opinion writers for a given category, the greater the reduction in standard deviation for that category. For example, by omitting opinion writers who had returned only one liberal economic regulation opinion, the number of opinion writers in the LERLP category was reduced from 305 to 112 and the standard deviation was reduced from 42 to 33 while the LERLP mean remained constant at sixty-seven.

In many ways the removal of single opinion writer may offer a more meaningful picture of the distribution of liberal propensity. Future studies should explore the possibility of limiting analysis to judges who have returned >10 opinions. However, this reduction may also create certain distortions. Having defined opinions as policy statements and having defined our data base as the universe of these statements, we are, by definition, discarding important information by

discarding large numbers of opinions. This problem is compounded because the single opinion writers are not distributed evenly by either time of appointment or by appointing president. As indicated by the difference between the percentage of opinions which were issued by Nixon appointees ($< .05$) and the percentage of opinion writers appointed by Nixon (.15), a disproportionate number of Nixon appointees are removed from the analysis by omitting writers of a single opinion.

Given the heuristic, exploratory nature of this study, the entire set of opinion writers will be used. However, future studies which wished to describe specific distributions more carefully might consider limiting their data base to those judges who have heard more than one case. Future studies should also generalize from distributions of liberal opinions to opinion writer liberalism very carefully, especially in labor cases.

Step Three: Differences in Mean Liberal Propensity Scores by Political Party Affiliation and by Appointing President

In step three, differences among background categories in mean liberal propensity are reported for each of the three background categories. These liberal propensity scores are compared to the percentage of liberal opinions reported in chapter three for all cases and for each aggregated case category. A secondary question addressed in step three is whether significant variance in liberal propensity occurs among opinion writers appointed by different presidents of the same party. As with chapter three, this possibility will be tested by treating each president's appointees as a sample of the population of appointees by presidents from that president's party. For example, F. Roosevelt

appointees will be treated as a sample of the population of opinion writers appointed by Democratic presidents. A "Z" test statistic will be computed to determine whether each sample's mean liberal propensity is different from its population mean to a statistically significant degree.

The first question addressed in step three is whether differences in mean liberal propensity exist between Democrats and Republicans. Even though the unit of analysis has shifted from the opinion to the opinion writer, the hypothesis to be tested is derived from chapter three's finding that Democrats return a higher percentage of liberal opinions than do Republicans.

H4a: The mean liberal propensity score for Democrats will be higher than the mean liberal propensity score for Republicans for all cases and for each aggregated case category.

Table 4g reports the differences in mean liberal propensity between Democrats and Republicans for all opinions and for each aggregated opinion category.

TABLE 4(g)

Differences in Mean Liberal Propensity (MLP) Between Democrats and Republicans for All Cases and for Five Aggregated Case Categories

	N	DEMOCRATS		N	REPUBLICANS		Diff.+ of Means
		Mean Lib. Propensity	Standard Deviation		Mean Lib. Propensity	Standard Deviation	
ALL	452	.48	22	372	.42	26	+6
CSLP	353	.33	33	232	.25	31	+8
CDLP	358	.48	35	260	.38	36	+10
FELP	259	.49	39	189	.42	40	+7
LLP	265	.46	39	203	.40	39	+6
SLERLP	170	.73	40	121	.58	44	+15

Thus the mean differences are in the hypothesized direction for all cases and for each category. Democratic liberal propensity scores are higher than Republican liberal propensity scores. However, in substantive terms the mean difference for all cases and for most categories is rather small, with only class discrimination and local economic regulation cases generating more than ten percent difference between the two parties. Also of interest is the comparison between opinion writer party differences and opinion party differences. As indicated in Table 4(h), these differences exist but are not large for most case categories.

TABLE 4(h)

Differences in Mean Liberal Propensity (MLP) and Percent Liberal Opinions (PLP) by Political Party Affiliation and for All Cases and for Each Aggregated Case Category

	DEMOCRATS			REPUBLICANS		
	MLP	PLP	Δ^*	MLP	PLP	Δ
ALL	48	44	+4	.42	40	2
CSLP	33	28	5	.25	22	3
CDLP	48	48	-	.38	40	-5
FELP	49	55	-6	.42	47	-5
LLP	46	46	-	.40	42	-2
SLERLP	73	71	2	.58	58	-

*(MLP-PLP)

Across all cases there is a tendency for MLP scores to be slightly higher than PLP scores for both parties, indicating that conservative opinion writers have returned slightly more opinions than have their more liberal counterparts. However, the direction and magnitude of the differences fluctuate substantially among categories. For example, the percentage of liberal opinions is substantially higher than the liberal propensity mean for expression cases, indicating that the more prolific

opinion writers in this category tend to be more liberal. Interestingly, in class discrimination opinions the more prolific Republicans tend to be more liberal than other Republicans. Explanations for these differences among categories and between parties will be sought under controls for space and time in chapters five and six respectively. However, at this point one can say that generalizations from percentage of liberal opinions to liberal propensity by party may be valid if made cautiously.

Liberal Propensity by Appointing President

The second liberal propensity differences to be examined are those between opinion writers appointed by different presidents. Among president differences in percentages of liberal opinions were substantial. Table 4(h) also suggests considerable variance in mean liberal propensities among groups defined by appointing president. For all cases, Nixon appointees stand out as considerably less liberal than those of other presidents. Nixon appointees' opinions seem to reflect the president's "law and order" campaign promises more accurately when aggregated by judge than when reported by opinion. Johnson's opinion writers are the most liberal, but the non-Nixon appointees are fairly closely clustered. The recent appointment and lack of opinion-writing opportunity for Nixon opinion-writers is reflected in the large standard deviation.

The most substantial difference in the all case category between percentage of liberal opinions and mean liberal propensity is that for Kennedy appointees. It was noted in chapter three that only 39 percent of the opinions of Kennedy appointees were liberal. This was surprisingly

low, equalling the liberal percentage for Nixon appointees. As indicated by Table 4(i), the mean liberal propensity for Kennedy appointees is 46 percent. Thus the more conservative Kennedy appointees are the more prolific opinion writers. More importantly, any attempts to generalize from opinions to the liberal propensities of Kennedy appointees would be misleading.

For aggregated criminal cases, three patterns develop. First, substantial differences emerge for Kennedy, Hoover and Coolidge appointees between the percentage of their appointees' criminal opinions which are liberal and their appointees' mean liberal propensity. In each case, the mean liberal propensity is higher, indicating that their more prolific appointees also tend to be more conservative in criminal cases.

Second, President Nixon's appointees tie Harding's appointees for the lowest mean liberal propensity for criminal opinions. Again, this is consistent with Nixon's vow to appoint "law and order" judges.⁶ However, liberal propensity in criminal cases has tended to follow party lines since the advent of the 1932 realignment. Given the centrality of economic issues in the 1932 realignment, this party relationship is somewhat surprising. The nature of this relationship over time is examined in chapter six.

Third, in this case category standard deviation scores are not high relative to those in other aggregated case categories, but they are quite high relative to the mean scores. Thus a great deal of variance occurs within each president's group of appointees as well as among groups defined by appointing president.

In the class discrimination (CDLP) category, Nixon appointees are notable for their low liberal propensity, while Kennedy appointees'

TABLE 4(i)

Appointing President by Liberal Propensity

	All Cases Liberal				CSLP				CDLP			
	N	\bar{X}	s	Op. Δ (N)	N	\bar{X}	s	Op. Δ (N)	N	\bar{X}	s	Op. Δ (N)
Presidents	(871)	46	29	+3	(608)	29	32	+4	(641)	44	34	-1
Nixon	133	38	30	-1 (39)	60	22	33	-2 (24)	93	37	40	-7 (44)
Johnson	127	50	21	-1 (49)	114	34	30	1 (33)	110	59	31	- (59)
Kennedy	99	46	19	+7 (39)	83	33	31	+8 (25)	84	44	31	5 (39)
Eisenhower	129	42	21	+3 (39)	106	23	28	3 (20)	95	38	33	-2 (40)
Truman	107	45	22	+4 (41)	87	27	30	6 (21)	86	40	30	-2 (42)
F. Roosevelt	133	49	20	+2 (47)	89	29	33	2 (27)	97	45	39	1 (44)
Hoover	47	46	29	+4 (42)	29	39	40	12 (27)	26	28	30	1 (27)
Coolidge	38	44	25	+1 (43)	17	39	38	16 (23)	22	51	43	- (51)
Harding	24	47	23	+5 (42)	14	22	28	4 (26)	15	34	35	- (39)

	FELP				LLP				LERLP			
	N	\bar{X}	s	Op. Δ (N)	N	\bar{X}	s	Op. Δ (N)	N	\bar{X}	s	Op. Δ (N)
President	467	46	40	-5	(489)	(43)	(39)	(-8)	305	67	42	+1
Nixon		41	41	-2 (43)		42	42	- (42)	19	55	50	+3 (52)
Johnson		56	37	-8 (64)		48	43	-4 (52)	48	81	35	- (81)
Kennedy		46	40	-8 (59)		53	35	+1 (52)	46	81	35	+1 (80)
Eisenhower		39	39	-12 (49)		36	36	-6 (42)	58	61	43	-1 (62)
Truman		48	38	+8 (44)		46	37	- (46)	39	69	41	+3 (66)
F. Roosevelt		45	45	- (45)		36	36	+1 (35)	47	68	43	-2 (66)
Hoover		40	43	- (40)		53	44	+13 (40)	20	55	48	-5 (60)
Coolidge		28	40	-7 (35)		48	41	+8 (40)	15	53	42	-1 (52)
Harding		37	41	+2 (39)		39	37	-9 (48)	8	40	50	-11 (29)

mean liberal propensity score is higher than their percentage of class discrimination opinions which were liberal. The relative mean liberal propensity scores for Nixon and Kennedy appointees seems a better reflection of each president's class discrimination policy propensity than did the percentage of liberal opinions. In fact, the results here suggest that a valuable future study might compare the liberal propensities of presidential appointees with presidential policy propensities as reflected in party platforms and for campaign statements. Links similar to these established by Benjamin Ginsberg between party platforms and congressional policy propensities might well be established for judicial policy propensities as well.⁷

The LLP scores raise several interesting points. First, the number of appointees issuing labor opinions has dropped rather steadily since Eisenhower. This is consistent with the decline in the number of labor opinions reported in chapter three.

Second, Kennedy appointees emerge with the highest mean labor liberal propensity score and the smallest standard deviation indicating a fairly consistent pro-labor position for Kennedy appointees. The minus eight percent disparity reported in step two between mean liberal propensity and liberal percentage of labor opinions is accounted for primarily by the Johnson appointees and secondarily by Eisenhower appointees. The minus disparity for Johnson and Eisenhower appointees indicates that a few of their appointees are returning a large number of pro-labor opinions, while the majority continue to favor management. Here again, generalization from opinion to opinion writer would be dangerous and misleading, especially for opinion writers appointed by Johnson.

Third, the low percentage of liberal labor opinions returned by Roosevelt appointees is reduced even further when one examines Roosevelt appointees' mean labor liberal propensity scores. Only Eisenhower appointees have such a low (36) mean labor liberal propensity score. The position of Roosevelt appointees remain perplexing and will be examined closely under controls for time and jurisdiction.

Two aspects of the among president differences in expression cases call for comment. First, Johnson, Kennedy, and Eisenhower appointees have substantially lower mean liberal propensity scores than would be predicted by the percentage of their appointees opinions which were liberal. In each case, their more prolific appointees tend to be their more liberal appointees. The trend is reversed for Truman appointees. Second, the among president differences follow party lines quite closely, with the exception of Johnson appointees. Johnson appointees' mean liberal propensity score is ten points higher than the appointees of any other president. This is particularly interesting since the bulk of the expression opinions returned by Johnson appointees probably involved expression of opposition to the Vietnam War. In chapter six, the extent to which this policy propensity reflected the Warren Courts liberal policy in expression cases will be explored.

Local Economic Regulation cases reflect a remarkable consistency between percentages of liberal opinions and mean liberal propensity scores, and the differences among groups defined by appointing president are quite large. Fully 26 percentage points separate Johnson appointees and Nixon appointees. Further, with the exception of Nixon appointees,

standard deviation scores are small relative to mean scores.

The LER mean liberal propensity scores seem to vary along party lines as well, with Democrats consistently more liberal. However, a pattern of increased liberalism on the part of both parties appears to be reversed by Nixon appointees. This trend is consistent with Chapter three and will be examined further in Chapter six.

As indicated in Table 4(i), there are differences among appointing president in the mean liberal propensity of their appointees for all cases. However, these differences do not indicate whether significant differences occur among the appointees of presidents from the same party. Thus, a secondary question addressed by this chapter is the extent to which variance in liberal propensity occurs among opinion-writers appointed by different presidents from the same party. The analysis in chapter three indicated that a significant amount of variance in the percentage of liberal opinions occurred among Democratic presidents, while no significant variance occurred among Republicans. This chapter, however, is based on the premise that percentages of liberal opinions may not be an accurate reflection of differences in opinion-writer liberalism. Table 4(j) seems to justify this skepticism.

In fact, when focusing on opinion writer propensity rather than simple opinions, the differences among Democrats almost disappear while the differences among Republicans are magnified. Of course, the generally smaller Z scores are partially the result of the smaller number of cases inherent in the aggregation by judge. Nonetheless, the differences between analysis by opinion and analysis by opinion writer are apparent. It should be noted that analysis by opinion-writer

TABLE 4(j)

Variance from the Party Liberal Propensity Mean for Samples Defined by Appointing President

DEMOCRATS $\mu = .48$ $\sigma = .22$					REPUBLICANS $\mu = .42$ $\sigma = .26$				
President	\bar{X}	Party Δ	Op. Writ. Z	Op. Z	President	\bar{X}	Party Δ	Op. Writ. Z	Op. Z
Johnson	50	+2	1.02*	6.05	Nixon	38	-4	-1.77*	-.63
Kennedy	46	-2	.90*	-5.87	Eisenhower	42	0	0*	1.28
Truman	45	-3	1.41*	-3.69	Hoover	46	+4	1.00*	1.33
Roosevelt	49	+1	.52*	3.33	Coolidge	44	+2	.95*	1.61
Mean Diff. = 1.21					Harding	47	+3	.94*	.94
					Mean Diff. = 1.261				

* = not significant at .05 (two tail)

does substantiate the conservative trend for the appointees of Republican presidents which was suggested in Chapter three.

In sum, differences in liberal propensities between Democrats and Republicans are small but consistent. These differences are not directly comparable to earlier studies of decision making on federal district courts, because these earlier studies were based on the opinion as the basic unit of analysis. These party differences are, however, similar to those reported by Goldman in his study of U.S. Appeals Courts.⁸ In Goldman's study, the largest differences occurred for economic cases.⁹ Here, the largest difference occurred for the economic regulation category; however, differences for non-economic categories were greater than were those for labor cases. Goldman also found that controlling for region increased party differences.¹⁰ Similar controls will be applied to this data in chapter five.

Differences based on appointed president are somewhat larger and extend beyond party differences. For example, Nixon appointees seem to reflect their appointing president's policy propensities, especially in criminal cases. However, within party differences in mean liberal opinion among groups defined by appointing president are smaller than similar differences based on the percentage of opinions which are liberal. Likewise, substantial differences emerged between liberal propensity scores and the liberal percentage scores reported in chapter three. These differences were especially apparent in the analysis by appointing president. For example, the mean liberal propensity score for Kennedy appointees was much higher than the liberal percentage of his appointees' opinions. These differences were also apparent in specific aggregated case categories. For example, the mean liberal expression propensity of Johnson appointees was substantially lower than the percentage of their expression opinions which were liberal. As a whole, the differences between liberal propensity and liberal percentage are not sufficiently large to invalidate all generalization from opinions to opinion writers; however, they are sufficiently large to dictate that such generalization should be offered cautiously and tentatively.

Opposite Party Appointments

The last differences to be examined in step three are those between opinion writers appointed by presidents of the opposite party. Chapter three reported among-president differences in the percentage of opinions which were liberal. In chapter three, we also reported that Republicans

appointed by Democrats returned the same percentage of liberal opinions as did Democrats appointed by Republicans. Here, we ask whether this pattern applies to liberal propensity. Table 4(k) indicates that for all cases it does.

TABLE 4(k)
Mean Liberal Propensity Scores for Opposite
Party Appointees--All Cases

	N	Mean Liberal Prop.	Standard Deviation	Party Δ	Opinion Δ
Democrats by Republicans	28	45	30	-3 (48)	+1 (44)
Republicans by Democrats	25	46	15	+4 (42)	+2 (44)

As with opinions, the mean liberal propensities of opposite party appointees are remarkably similar. Democrats appointed by Republican presidents are slightly more conservative than are other Democrats, while Republicans appointed by Democrats are slightly more liberal than other Republicans. However, it is interesting to note that the standard deviation is much larger for opposite party Democrats than for opposite party Republicans. In all probability, this reflects the fact that opposite party Republicans have returned many more opinions (787) than have opposite party Democrats (390); therefore, opposite party Democrats include more opinion writers with extreme scores of 100 or zero.

As indicated by Table 4(l), interesting differences also occur by aggregated case category.

TABLE 4(1)

Mean Liberal Propensity Scores for Opposite Party Appointees--By
Aggregated Case Category

	Democrats By Republicans					Republicans by Democrats				
	N	Mean	Standard Deviation	Δ Party		N	Mean	Standard Deviation	Δ Party	
				R	D				R	D
CLP	13	42	39	+7 (25)	+9 (33)	20	26	26	+1 (25)	-7 (33)
CDLP	18	31	36	-7 (38)	-17 (48)	25	40	31	+3 (38)	-8 (48)
ELP	8	31	38	-11 (42)	-18 (49)	22	59	41	+17 (42)	+10 (49)
LLP	10	58	47	+18 (40)	+12 (46)	18	44	38	+ 4 (40)	- 8 (46)
LERLP	10	52	39	-6 (58)	-21 (73)	12	76	41	+18 (58)	+ 3 (73)

Mean liberal propensity differences between opposite party appointees and party regulars are quite large for every category. It is interesting to note that for local economic regulation cases, Democrats appointed by Republicans are closer to Republicans, while Republicans appointed by Democrats are closer to Democrats. Hence, both are closer to the mean policy propensity of their appointing president's party than to their own party. This same pattern holds to a lesser degree for expression and class discrimination cases. This may suggest that these policy categories are more salient to appointing presidents. However, opposite party Democrats are much more liberal in labor cases than regular party

appointees from either party suggesting a strong party saliency.

At the very least, the differences between opposite party appointees and party regulars dictate that opposite party appointments should be given careful attention in any attempt to explain variance in liberal propensity by differences in opinion-writer backgrounds. The results of such an attempt are reported in step four below.

Step Four: Variance in Opinion-Writer Liberal Propensity Explained by
Differences in Opinion Writer Backgrounds

None of the background characteristics tested in chapter three was a strong predictor of the liberal/conservative nature of the opinion. However, we have argued that one cannot generalize this weakness to the relationship between opinion-writer's backgrounds and their propensity to issue liberal policy statements. Thus, the relationship between opinion writers' background characteristics and their liberal propensities is tested in step four for all cases and for each of the five categories of opinions.

Having established that differences in mean liberal propensity exist between Democratic and Republican opinion writers and among opinion writers appointed by different presidents, we are now in a position to determine whether among-judge variance in liberal propensity is related to among-judge differences in background characteristics. Two different background characteristics will be tested for all cases and for each of the five aggregated case categories. The method for testing this relationship was presented at some length in chapter two and will only be reviewed here.

Political Party Affiliation

The first relationship to be tested is that between the opinion-writer's political party affiliation and his liberal propensity.

Political party affiliation has been broken into four categories to include opposite party effects:

1. Democrats appointed by Democratic presidents.
2. Democrats appointed by Republican presidents.
3. Republicans appointed by Republican presidents.
4. Republicans appointed by Democratic presidents.

This nominal level independent variable has been effect coded into four dummy variables (see chapter two). Stepwise multiple regression analysis is applied to determine the extent to which variance in liberal propensity can be explained by knowing an opinion writer's political party affiliation category.¹¹ In the language of least squares analysis, this is the equivalent of asking the extent to which knowing a judge's political party category reduces error in predicting that judge's liberal propensity score. With no other information, each opinion-writer's predicted score is the mean for all opinion writers. Given knowledge of party affiliation, each opinion-writer's predicted score becomes the mean for his party affiliation category. The independent variable (party affiliation) can be said to "explain" variance in the dependent variable (liberal propensity score) to the extent that knowing his party affiliation reduces the difference between his predicted score (party mean) and his observed score.

In the stepwise multiple regression program,¹² the dummy variable which explains the largest amount of variance is entered into the

equation first, followed in descending order of explanatory power by those remaining independent variables which can further reduce unexplained variance in the dependent variable. The following statistics generated by this program will be utilized to report the amount of variance explained:

r = Pearson's r , a measure of the strength and direction of the relationship between the dependent variable and a single independent variable

R = Multiple R , a measure of the strength and direction of the relationship between the dependent variable and the combination of independent variables.

R^2 = the amount of variance in the dependent variable explained by knowledge of the independent variables.

The ability of party affiliation to explain variance in liberal propensity is reported in Table (m).

TABLE 4(m)

Relationship Between Party Affiliation and Liberal Propensity

<u>ALL CASES</u>								
			<u>r</u>	<u>R^2</u>				
R by R			-.12	.015				
D by D			.10	.02				
R =			.13	.02				
<u>CLP</u>	<u>r</u>	<u>R^2</u>	<u>CDLP</u>			<u>ELP</u>		
D by R	.06	.004	R by R	-.12	.0004	R by R	-.08	.006
R by D	-.02	.001	- - -	-	-	D by R	.05	.008
R =	.06	.005	R =	.02		R =	.09	
<u>LLP</u>			<u>ERLP</u>					
R by R	-.04	.002	D by R	-.07	.009			
- - -	-	-	R by D	-.04	.006			
R =	.04		R =	.08				

where; R by R - Republican judge appointed by Republican president
 R by D - Republican judge appointed by Democratic president
 D by D - Democratic judge appointed by Democratic president
 D by R - Democratic judge appointed by Republican president

The pearson correlation coefficients (r) indicate that Republican judges appointed by Republican presidents are negatively correlated with liberal propensity for all cases, for criminal cases, for class discrimination cases, and for labor and regulation cases. As would be predicted from step three, Republicans appointed by Republicans are weakly but negatively correlated with liberal propensity in expression cases. Knowledge that a judge is a Democrat appointed by a Democrat has no predictive value for specific case categories; however, it is weakly correlated with above-the-mean liberal propensity for all cases. Being a Democrat appointed by a Republican is positively associated with liberal propensity for criminal cases but negatively associated for expression and economic regulation cases. Opposite party appointees by Republican presidents are of no explanatory value.

The negative correlations for Democrats appointed by Republicans is of some interest and is consistent with their conservatism in regulation cases as reported in step three above. However, given the overall pattern of small correlation coefficients, speculation concerning them would be virtually meaningless. The overwhelming message of Table 4(m) is the inability of differences in party affiliation to explain variance in liberal propensity. As indicated by Table 4(m) the categories defined by party affiliation and opposite party appointment contribute very little to understanding variance in liberal propensity. In fact, for all cases, knowledge of party affiliation explains only two percent of variance in liberal propensity. Party affiliation explains only two percent of variance in liberal propensity. Party affiliation explains less than one percent of liberal propensity variance

for each aggregated case category.

Reflection on the analysis in step three provides two reasonable explanations for the inability of party affiliation differences to explain variance in liberal propensity. First, large standard deviations indicated a great deal of within party variance. Second, the mean differences between parties are relatively small. In a word, party affiliation was not a good predictor of the liberal/conservative nature of an opinion and it is not a good predictor of opinion writers' liberal propensity. Appointing president was a better predictor of liberal/conservative opinions; therefore, the second relationship tested in this step is that between the opinion writer's appointing president and liberal propensity. More specifically, the goal is to determine the amount of variance among opinion-writers in liberal propensity which can be explained by knowing each opinion writer's appointing president. The same measurement techniques outlined for party affiliation are used to measure the effects of appointing president. The effect coding scheme is detailed in chapter two.

Appointing President

Given the fact that appointing president was more strongly associated with the liberal/conservative nature of an opinion in chapter three than was party affiliation, one would expect appointing president to be the better predictor of liberal propensity. Table 4(n) indicates that this is indeed the case.

Appointment by President Johnson is positively associated with liberal propensity for all cases and for each aggregated case category.

Table 4p
Relationship Between Appointing President and Liberal Propensity

ALL CASES					
	r	R ²		r	R ²
Johnson	.12	.01			
Nixon	-.09	.03			
Eisenhower	-.06	.03			
Roosevelt	.06	.04			
Truman	.02	-			
Kennedy	.009	-			
R=	.20	.04			

CLP			CDLP			ELP			LLP			LERLP		
	r	R ²		r	R ²		r	R ²		r	R ²		r	R ²
Johnson	.18	.03	Johnson	.29	.08	Johnson	.27	.08	Johnson	.18	.03	Johnson	.24	.06
Eisenhower	-.11	.05	Truman	-.11	.08	Truman	-.09	.08	Roosevelt	-.11	.05	Nixon	-.22	.11
Truman	-.08	.05	Nixon	.08	.08	Kennedy	.02	.08	Kennedy	.13	.06	Kennedy	.19	.13
Kennedy	.07	.06	Roosevelt	.02	.09	Nixon	-.06	.08	Truman	.09	.06	Truman	.06	.13
Nixon	-.02	.06	Eisenhower	.02	.09	Eisenhower	.006	.09	Eisenhower	-.02	.07	Roosevelt	.05	.13
F. Roosevelt	.01	.06	Kennedy	.01	.09	Roosevelt	-.05	.09	Nixon	.05	.07	Eisenhower	.01	.13
R=	.25	.06	R=	.29	.09	R=	.30	.09	R=	.26	.07	R=	.36	.13

While the associations are not particularly strong, they are stronger than the associations for political party affiliation. In fact, for each aggregated case category, knowing only whether or not each opinion-writer was appointed by Johnson enables one to explain more variance in opinion-writer liberal propensity than does knowing each judges' party affiliation.

Appointment by President Nixon, on the other hand, is negatively correlated with liberal propensity across all cases and for criminal, free expression, and local economic regulation cases. Interestingly, Nixon appointees are weakly but positively related to liberal propensities in labor and class discrimination cases. Appointment by President Kennedy is virtually unrelated to liberal propensity across all cases; however, it is positively related to liberal propensity in labor and local economic regulation cases. Similarly, appointment by Eisenhower is not a good predictor of liberal propensity; however, it is interesting to note that appointment by Eisenhower is a better predictor of low liberal propensities in criminal cases than is appointment by Nixon.

Appointment by Roosevelt is weakly but positively associated with liberal propensity for all cases. In labor cases, however, appointment by Roosevelt is negatively associated with liberal propensity, which is consistent with the pattern which has developed since chapter three.

The effect of appointment by Truman is negligible. Even in class discrimination cases where appointment by Truman is negatively related to liberal propensity ($r = -.11$), this knowledge adds less than one percent to explained variance.

When one looks at explained variance it becomes apparent that even though appointing president is a better predictor of liberal propensity than is party affiliation, it accounts for but a fraction of the variance in liberal propensity. Further, the majority of the variance explained is accounted for by simply knowing whether the opinion writer is a Johnson appointee. However, there are exceptions to this pattern. In labor cases, knowing whether an opinion writer was appointed by Roosevelt explains two percent of the variance in labor liberal propensity, while Nixon appointment explains five percent of the variance in local economic regulation cases.

As was noted in chapter three, appointing president differences may be a function of differences in time as well as differences in appointing president. For example, differences between Johnson and Roosevelt appointees may reflect changes in the environment, changes in Supreme Court policy or changes in statutory guidelines. However, the magnitude of differences between adjacent presidents such as Johnson and Nixon suggest that appointing president does have some limited effect. Further, while some overlap is indicated between party affiliation and appointing president, appointing president effects are clearly more than surrogates for party affiliation effects.

The ability of appointing president to explain more variance than party affiliation should not come as a surprise in a presidential system with weak parties such as the United States. Given the role of the president in judicial selection, one would expect his policy propensities to be reflected in his judicial appointees. With a few exceptions, such as Roosevelt appointees in labor cases, this appears to

be the case. However, the effects of appointing president are not strong enough to be sure that they will endure controls for variance among circuits and states and for variance across time. These possibilities will be explored in chapters five and six respectively.

¹Richard Richardson and Kenneth Vines, The Politics of Federal Courts (Boston: Little, Brown, and Co., 1970), Chapter 3.

²Specifically, one cannot subtract the year an opinion-writer was appointed from the year an opinion was issued if one aggregates opinions by opinion-writer.

³See Henry Abraham, The Judicial Process: An Introductory Analysis of the Courts of The United States, England and France (New York: Oxford University Press, 1975), p. 158.

⁴The breakdown of mean number of opinions by appointing president is as follows:

Nixon=967/133=7.3	
Johnson=3611/127=28.4	
Kennedy=3294/99=32.3	\bar{X} =30.5 opinions
Eisenhower=3946/129=30.6	
Truman=3765/107=30.6	
Roosevelt=3053/133=22.9	
Hoover=1068/47=22.7	\bar{X} =23.5 opinions
Coolidge=692/28=24.7	
Harding=536/24=22.3	

The increase between Roosevelt and Truman should be the subject of future research.

⁵Alpha factor analysis is designed for data sets which include the entire population under consideration but which may not include certain variables. See R.J. Rummel, Applied Factor Analysis (Evanston: Northwestern University Press, 1970), p. 129.

⁶For a summary of Nixon appointment criteria see Sheldon Goldman and Thomas R. Jahnige, The Federal Courts as a Political System (New York: Harper and Row, 1976), pp. 59-62.

⁷See B. Ginsburg, "Critical Elections and the Substance of Policy Conflict," Midwest Journal of Political Science, Vol. 1 (Feb., 1972), p. 91; by the same author, "Elections and Public Policy," American Political Science Review, (March, 1976), p. 49.

⁸Sheldon Goldman, "Voting Behavior on the United States Courts of Appeals Revisited," American Political Science Review, Vol. 69 (May, 1975), pp. 491-506.

⁹Ibid, p. 504.

¹⁰Ibid.

¹¹Stepwise multiple regression is explained very clearly in Fred N. Perlinger and Elazar J. Pedhauzer, Multiple Regression in Behavioral Research (New York: Holt Rinehart and Winston, Inc., 1973), Chapter 10.

¹²The program utilized is adopted from Norman H. Rie, et. al., Statistical Package for the Social Sciences (New York: McGraw-Hill, 1975), Chapter 20.

CHAPTER FIVE

The Effects of Spatial Differences on Variance in Liberal Propensity

The findings reported in chapter three and in chapter four tend to confirm conclusions by Dolbeare,¹ Vines,² and Richardson and Vines³ that political party affiliation is a very weak predictor of a federal district judge's policy propensities. These same authors concluded that the interaction between the judge and the immediate local environment⁴ was the most important determinant of liberal propensity.

The earlier studies cited were all limited in scope to a relatively small number of jurisdictions and fairly specific case categories. Thus, they were unable to test the effects of party affiliation or the spatially defined environment across all federal district courts or across a variety of case types. Further, since each study was limited to a limited number of jurisdictions, they were unable to test the effects of larger jurisdictions such as states and circuits. Finally, since each study was based on a limited number of opinions, the authors were forced to rely on the opinion rather than the judge as the unit of analysis. As indicated in chapter four, this reliance is often misleading when one attempts to generalize to judges or even to opinion writers.

Given the size and scope of this data set, the study reported here is able to test the effects of differences among circuits and states on judges' liberal/conservative policy propensity across a variety of case types. Further, this large data set facilitates tests for inter-party differences with controls for case type and for circuit. Finally, this data set enables one to focus on mean liberal propensity of opinion

writers rather than the percentage of liberal opinions.

Chapter five is, therefore, devoted to increasing understanding of the interaction between the spatial setting and party affiliation on judges propensity to issue liberal opinions by exploring the following two general questions:

1. What are the differences in mean liberal propensity among circuits and states for all cases and for each aggregated case category?
2. What are the differences in liberal propensity between Democratic and Republican opinion writers under controls for circuit?

This chapter is divided into three sections. In the first two, each general question will be explored in turn. In exploring each general question it is anticipated that questions suitable for future studies will be generated; thus, the third and concluding section of this chapter will be devoted to summarizing its findings and suggesting questions for future research into the effects of spatial differences on judicial policy outputs. The specific questions to be addressed, the hypotheses to be tested and the methods to be applied will be introduced separately for each general question. However, the five aggregated case types utilized in chapter four will remain the same throughout:

1. Crime - CLP
2. Class Discrimination - CDLP
3. Expression - ELP
4. Labor - LLP
5. Local Economic Regulation - LERLP

Circuit and State Differences

Liberal propensity differences among circuits and states will be explored in three steps. First, the distribution of federal judicial

districts by circuits and states will be described briefly. Next, the distribution of opinion writers' mean liberal propensity and the standard deviation of liberal propensity scores will be described by circuit for all cases and for each aggregated case category. One-way analysis of variance (ANOVA) will be utilized to compute an "F" test statistic to determine whether differences among circuits are significantly greater than liberal propensity variance within circuits. Anova will also be utilized to compute the Eta squared (E^2) measure of explained variance. (See chapter two.) Finally, in step three the distribution of opinion-writer mean liberal propensity and the standard deviation will be presented by state for all cases and for each aggregated case type. Again, an F statistic and E^2 will be computed and reported to determine whether among-state differences in mean liberal propensity are significantly greater than within state differences and to measure the amount of liberal propensity variance among judges explained by knowing the state in which they preside.

Description of Circuits and States

The lower federal courts are divided into ten circuits plus the district of Columbia. Within these circuits some 400 federal district judges sit in 94 district courts.⁵ Federal judicial districts do not cross state lines. Thus, each state comprises at least one federal judicial district. However, more populous states may be divided into as many as four districts. For example, the state of Nevada's boundaries define a single judicial district, while California has four districts within its boundaries. Further, most districts are divided among two

or more judges; as an extreme example, the southern district of New York is made up of 27 judges.⁶

Liberal Propensity By Circuit

There are several reasons why one might expect fairly homogeneous policy propensities among opinion-writers in the same circuit. First, as noted in chapter one, circuit boundaries coincide with areas commonly recognized as "regions" with common economic and cultural characteristics and policy propensities.⁷ Second the decisions of each judge within a circuit are subject to review by the same immediate appellate tribunal. Intuitively, one would expect this common review to mold a certain consistency in decisional propensities. Thus, beyond the limits placed on discretion by Supreme Court decisions and general considerations of stare decisis, the federal district courts are limited by their Circuit Court of Appeals.⁸ It should be noted that district court judges have frequently been able to circumvent the influence of appellate courts⁹ and that substantial within circuit variance in liberal propensity may occur.¹⁰ Nonetheless, one would expect more among-judge variance in policy propensity to occur among circuits than within circuits.

The third reason to expect relative homogeneity of liberal propensity within circuits stems from a series of studies cited in chapter one which have identified common circuit membership as a unifying element among judges.¹¹ For example, Robert Carp found that Eighth Circuit judges communicate almost exclusively with other judges within the same circuit.¹²

In sum, the evidence would lead one to predict that significantly

more variance in liberal propensity would occur among circuits than among judges within the same circuit. To explore this possibility, the following hypothesis will be tested:

Hypothesis 5a; Among circuit variance in liberal propensity will exceed within circuit variance in liberal propensity to a statistically significant degree for all cases and for each aggregated case category.

$$H_1: u_1 = u_2 = \dots u_{11}$$

$$H_0: u_1 = u_2 = \dots u_{11}$$

The methods for testing this hypothesis were presented in chapter two; however, they will be reviewed here briefly. The analytic question is whether each circuit's opinion writers can be treated as a sample of opinion-writers drawn from the same analytic populations (H_0) or whether they constitute analytically separate populations (H_1). If the variance in liberal propensity among circuits exceeds that within circuits to a statistically significant degree, one may conclude that each circuit represents an analytically separate population and accept hypothesis 4a; if not, one must reject 4a and accept the null hypothesis. To test the significance of among circuit differences, one-way analysis of variance will be utilized to compute the F test of statistical significance. Statistical significance will be determined at the .05 level. ANOVA is also used to compute the E^2 measure of the extent to which circuit differences explain variance in liberal propensity. The among circuit differences for all cases are presented in Table 5(a) which reports the number of opinion-writers, the liberal propensity mean and standard deviation and the difference from the population liberal propensity mean

($\Delta\mu$) for each circuit as well as the F and E^2 measures of differences between circuits.

TABLE 5(a)

Number of Opinion-Writers, Mean Liberal Propensity and Standard Deviation by Circuit--All Cases ($\mu=45$)

	<u>N</u>	<u>\bar{X}</u>	<u>s</u>	<u>$\Delta\mu$</u>
First	30	52	24	+7
Second	99	46	22	+1
Third	92	42	17	-3
Fourth	66	42	30	-3
Fifth	131	42	23	-3
Sixth	74	48	29	+3
Seventh	55	49	24	+5
Eighth	65	45	23	--
Ninth	128	46	27	+1
Tenth	35	46	30	+1
D C	40	50	21	+5
<hr/>				
Total		$\mu=45$	$\sigma=25$	$\bar{X}\Delta=12.91$

F = 1.21 (Not significant at .05)

$E^2 = .01$

where: μ = population mean

\bar{X} = circuit mean

$\Delta\mu$ = difference between population mean and circuit mean

Table 5(a) indicates two things. First, substantial differences in mean liberal propensity exist among circuits. Second, these differences are not statistically significant, and explain only one percent of the among judge variance. The First Circuit is well above the liberal propensity mean. However, this New England circuit is represented by a relatively small number of opinion writers (30). Circuits such as Five

and Nine with a larger number of opinion writers are of course much closer to the population mean liberal propensity. The direction of the differences is as would be expected for most circuits. For example, the liberal propensity mean for the Fifth Circuit is slightly below the population mean, while the mean for the Second Circuit (N.Y., Conn.) is slightly above the mean. However, the differences are too small to overcome substantial within circuit variance. Thus, hypothesis 5(a) is rejected for all cases.

Hypothesis 5(a) is not, however, rejected for each aggregated case category. As indicated by Table 5(b), both substantively and statistically significant differences occur among circuits for class discrimination and free expression cases.

The most interesting differences occur in the class discrimination category. Overall, the differences are significant at the .01 level, although only four percent of the liberal propensity variance is explained. Substantively, the Fifth Circuit and Washington D.C. stand out as the most liberal ($\Delta\mu = +10$). Further, standard deviations in these circuits are small relative to mean liberal propensity scores, indicating a fairly consistent liberalism. Further, more judges have issued class discrimination opinions from the Fifth Circuit than from any other circuit.

While disparity is not surprising for the Washington D.C. Circuit the disparities for the Fifth Circuit are quite surprising in light of the South's reputation for racial prejudice and discrimination. Given the large black population in the states which comprise the Fifth Circuit, the high liberal propensity mean is even more surprising in light of Richardson and Vines' finding that the black population in a district

TABLE 5 (b)

NUMBER OF OPINION WRITERS, MEAN LIBERAL PROPENSITY AND STANDARD
DEVIATION BY CIRCUIT FOR EACH AGGREGATED CASE CATEGORY

	CRIME ($\mu=29$)				CLASS DISCRIMINATION ($\mu=44$)				FREE EXPRESSION ($\mu=46$)				LABOR ($\mu=43$)				REGULATION ($\mu=67$)			
	N	\bar{X}	S	Δ	N	\bar{X}	S	Δ	N	\bar{X}	S	Δ	N	\bar{X}	S	Δ	N	\bar{X}	S	Δ
FIRST	22	23	27	-6	24	45	32	+1	21	70	32	+24	20	61	35	+18	12	81	32	+14
SECOND	79	26	29	-3	95	38	31	-6	66	44	36	-2	75	40	35	-3	36	74	42	+7
THIRD	83	28	32	-1	85	34	34	-10	59	59	40	+8	73	48	36	+5	41	76	39	+9
FOURTH	45	27	27	-2	52	37	34	-7	38	47	41	+1	38	44	42	+1	15	77	42	+10
FIFTH	95	33	34	+4	100	54	35	+10	71	45	38	-1	73	42	42	+1	57	62	42	-5
SIXTH	49	37	37	+8	50	45	37	+1	35	42	42	-4	42	49	37	+6	30	51	48	-16
SEVENTH	38	34	35	+5	39	52	38	+8	34	43	43	-3	36	37	38	-6	24	67	48	-
EIGHTH	48	24	27	-5	45	38	36	-6	31	42	37	-4	43	44	39	+1	27	70	40	-4
NINTH	93	28	33	-1	91	48	38	+4	65	42	41	-4	50	39	42	-4	32	63	43	-4
TENTH	25	27	29	-2	22	42	38	-2	19	18	33	-28	20	34	34	-9	16	71	43	+4
D.C.	22	42	39	+13	29	54	35	+10	26	50	42	+4	13	45	48	+2	15	59	40	-8
	588				620				459				472				294			
	F = 1.19*				F = 2.69				F = 2.19				F = .94*				F = 1.09*			
	$E^2 = .02$				p = .01				p = .05								$E^2 = .04$			
	*p < .05				$E^2 = .04$				$E^2 = .05$				$E^2 = .02$							

was negatively related to the frequency of liberal civil rights rulings from that district.¹³ However, this finding might have been predicted by the efforts of liberals to maintain the circuits current boundaries. There have been numerous attempts in recent years to break up the Fifth Circuit into two separate circuits because of its extremely heavy case-load. Such a move has been strongly, consistently, and successfully resisted by liberals for fear that such a move might well break up the liberal orientation of this circuit.¹⁴ Several related explanations may be offered for Fifth Circuit's surprisingly high liberal propensity in class discrimination cases.

First, studies of school desegregation and other forms of discrimination in the South indicate that the most flagrant discrimination and resistance to desegregation tends to occur in those school districts with a large black percentage in the population.¹⁵ One might argue that flagrant incidents of discrimination in the South may have produced fact situations which left judges little discretion and therefore mandated opinions against discrimination. This possibility is supported by the fact that minorities seeking to influence public policy in the South have focused on the federal courts in the absence of access to state courts or legislatures. Strategically, this focus on the courts as an agent of social change has motivated class discrimination litigants to present the most flagrant cases of discrimination in seeking to achieve anti-discrimination rulings.¹⁶

Second, the public pressures against liberal class discrimination rulings in the South may have motivated judges to issue opinions in these cases at least partially to justify their anti-discrimination

decisions to their local constituency. This possibility is supported by the fact that many liberal civil rights opinions are issued almost apologetically and include prejudiced, even racist comments by the opinion-writer.¹⁷

The explanation offered for the Fifth Circuit's liberalism does nothing to explain the Third Circuit's conservatism. However, it is interesting to note that the Third Circuit mean and standard deviation scores are the same, indicating a great deal of variance within the circuit. This variance may occur among the three states (N.J, Pa., Del.) or between Democrats and Republicans. Both possibilities are examined later in this chapter.

The F statistic for freedom of expression cases is significant beyond .05, and five percent of the variance among judges in expression cases can be explained by knowing each opinion-writer's circuit. The most interesting substantive finding for expression cases is the difference in mean liberal propensity between the First Circuit (.70) and the Tenth Circuit (.18). Given the high standard deviation and small numbers of opinion-writers, the low liberal propensity for the Tenth Circuit should be interpreted very cautiously. Nonetheless, the high liberal propensity mean and small standard deviation for the First Circuit is interesting in and of itself. Differences between states and between parties are examined in steps two and three for both circuits.

While the other three aggregated case categories do not reflect statistically significant differences among circuits, they reflect interesting individual differences. For example, in criminal cases, Washington D.C. is well above the liberal propensity mean, while the

usually liberal First Circuit has the lowest mean for criminal cases. Further, the First Circuit standard deviation is higher than the mean in criminal cases, indicating much less homogeneity in criminal cases than in other cases. The reasons for this will be explored in steps two and three under controls for within circuit differences among states and for between party affiliation.

The First Circuit liberal propensity is most evident in labor and local economic regulation cases. Once again, relatively low standard deviations suggest a high degree of within circuit homogeneity. The liberal First Circuit economic regulation score is especially interesting in comparison with the Sixth Circuit's low mean and high standard deviation. The most likely explanation for this contrast lies in the diverse composition of the Sixth Circuit--i.e., two northern, industrial states (Mi., Ohio) are combined with two border states (Kt, Tenn.).

Summary of Among Circuit Differences

Hypothesis 5a was rejected for all cases and for three case categories; however, it was accepted for class discrimination and freedom of expression cases. The most interesting single finding was the Fifth Circuits high mean liberal propensity in class discrimination cases.

Another interesting pattern emerges in comparing the five case categories. Both intuition and the judicial behavior literature cited in chapter one would predict a certain consistency for circuits between economic (labor and regulation) case categories and between civil (expression and class discrimination) case categories. For example, one would expect a given circuit to record approximately the same $\mu\Delta$ score

for expression cases as for class discrimination cases and the same μ^A for labor and local economic regulation cases. However, Table 5b indicates that this is not the case for civil or for economic cases.

The rejection of hypothesis 5a for most categories and the small variance explained for all categories may be a reflection of within circuit variance produced by differences among states within each circuit. Likewise, the lack of circuit consistency across case categories may reflect among state differences. The next step, therefore, is examination of liberal propensity differences among states.

Differences Among States--All Cases

Given the arrangement of federal judicial districts, the role of U.S. senators in federal district judge selection, and the influence of state law and custom over the number and type of cases which reach the federal bench,¹⁸ one would expect significant differences to exist among states in mean liberal propensity. In order to explore this possibility, the following hypothesis will be tested:

Hypothesis 5b: Among state variance in mean liberal propensity will exceed within state variance to a statistically significant degree for all cases and for each aggregated case category.

$$H_1 \quad u_1 = u_2 \dots u_{50}$$

$$H_0 \quad u_1 = u_2 \dots u_{50}$$

as with circuit differences, the F statistic and Eta squared (E^2) will be used to test the statistical significance and variance explained by among state differences. In addition to exploring overall differences among states, this section will explore differences in mean liberal propensity

between each state and its parent circuit.

To facilitate the testing of H 5b and exploring differences between states and their parent circuits, the states will be arranged by circuit. Each state's number of opinion-writers, liberal propensity mean and standard deviation will be presented. Additionally, the difference between the state mean and circuit mean will be presented for each state. As detailed in chapter two, a propensity heterogeneity score (PH) equal to the average absolute difference between the circuit mean liberal propensity and the mean liberal propensity score of each state within that circuit will also be reported for each circuit:

$$\text{Propensity Heterogeneity (PH)} = \frac{\sum (|\text{circuit } \bar{X} - \text{state } \bar{X}|)}{N \text{ of states}}$$

Finally, the F and E^2 statistics will be reported for the aggregate of among state differences.

This arrangement is presented for all cases in Table 5(c). The among state variance is not significant at the .05 level; therefore, Hypothesis 4b is rejected for all cases. It should be noted, however, that eight percent of liberal propensity variance is explained by knowing the opinion-writer's state. This is substantially more variance than was explained by knowing among-circuit differences. Further, the among state differences are significant at the .07 level. Thus, while among-state differences are not significant for all cases, they more closely approach statistical significance and explain more variance than do differences among circuits.

Several interesting patterns appear in the comparison between circuit means and the means of states within circuits. First, some circuits

TABLE 5 (c)

DIFFERENCES AMONG STATES IN MEAN LIBERAL PROPENSITY - ALL CASES

	N	\bar{X}	S		N	\bar{X}	S		N	\bar{X}	S		N	\bar{X}	S		N	\bar{X}	S	
<u>FIRST</u>	30	52	24		<u>THIRD</u>	92	42	30	<u>FIFTH</u>	131	42	23	<u>SEVENTH</u>				<u>NINTH</u>			
ME.	2	26	16	-26	DEL.	5	48	19 +6	ALA.	11	39	21 -3	ILL.	37	50	26 +1	ALAS.	10	50	24 +4
MASS.	9	49	23	-8	N.J.	22	49	17 +2	FLA.	30	46	22 +4	IND.	9	40	22 -9	ARI.	7	66	25 +20
N.H.	3	43	42	-9	PA.	55	41	16 -1	GA.	18	41	22 -1	WISC.	5	58	13 +9	CAL.	60	41	28 -5
R.I.	5	69	31	+12			\bar{X}	= 3.	LA.	19	42	21 -			\bar{X}	= 6.	HAW.	6	67	26 +21
P.R.	6	58	25	+6					MISS.	8	39	22 -3					IDHO.	6	43	27 -3
V.I.	4	46	16	-6					TEX.	35	39	28 -3					MON.	6	70	29 +24
		$\bar{X} \Delta$		= 11.4					**CZ	1	94	-					NEV.	5	40	23 -6
											\bar{X}	= 2.3					ORE.	5	36	17 -10
																	WASH.	12	36	12 -10
																	GUAM	3	39	35 -7
																		\bar{X}	= 11	
<u>SECOND</u>	99	46	22		<u>FOURTH</u>	66	42	30	<u>SIXTH</u>	74	48	29	<u>EIGHTH</u>	65	45	23	<u>TENTH</u>	35	48	30
CONN.	6	55	17	+11	MD.	9	36	24 -6	KT.	10	37	28 -11	ARK.	10	37	15 -8	COL.	5	46	16 -3
N.Y.	73	45	22	-1	N.C.	12	47	32 +5	MI.	24	43	29 -5	IWA.	11	57	30 +12	KAN.	9	34	28 -12
VT.	6	67	42	+21	S.C.	14	40	31 -2	OH.	26	60	31 +12	MINN.	8	51	30 +6	N.M.	5	61	31 +15
		\bar{X}	= 11		VA.	14	55	34 +13	TENN.	14	47	22 -1	MO.	19	39	19 -6	OKLA.	12	47	32 +1
					W.V.	11	25	20 -17			\bar{X}	= 7.2	NEB.	7	52	22 +7	UTH.	3	61	54 +15
							\bar{X}	= 8.4					N.D.	4	36	26 -9	WY.	2	38	12 -8
													S.D.	5	42	19 -3		\bar{X}	= 9	
														\bar{X}	= 7.3	DF				

54
104 F=1.34 *

E² = .08

*=not signif.at .05

present a much more homogeneous propensity pattern than do others. For example, both the Fifth and the Third Circuits reflect very little among-state variance. On the other hand, the First and Second Circuits, which appear to be geographically homogeneous, reflect substantial heterogeneity of liberal propensity. The high liberal propensity heterogeneity (PH) is more expected for the geographically diverse Ninth Circuit.

In each circuit characterized by large propensity heterogeneity certain states stand out as particularly atypical. In the First Circuit, the liberal propensity scores for Maine and Rhode Island are fully 38 points apart. In the Second Circuit, New York stands well below Connecticut and Vermont in mean liberal propensity. In the Ninth Circuit, Arizona, Hawaii, and Montana have uncharacteristically high liberal propensity means.

Individual states also stand out in other circuits. For example, Ohio seems substantially more liberal than its Sixth Circuit neighbors.

The reasons for this among state variance within circuits is difficult to project. Given among-state differences in other aspects of public policy,¹⁹ one might argue that the more homogeneous circuits are the anomalies requiring explanation. However, it is interesting to note that those circuits which most closely coincide with policy propensity regions as defined by Elazar, Sharkansky, and others,²⁰ tend to reflect the greatest degree of liberal propensity homogeneity. The among state differences may also reflect party differences. This possibility is explored later in this chapter. However, before moving to within state party differences, among state differences will be explored for each aggregated case category.

Among State Differences--Crime

The general pattern of among state differences for all cases is largely repeated for criminal cases. As indicated in Table 5(d) the F statistic does not achieve significance, but a substantial amount (10 percent) of liberal propensity variance is explained by among state differences. Further, similar patterns of among-state differences occur within circuits. For example, these patterns are quite similar in the Second Circuit. However, several differences also occur between the distribution for all cases and the distribution for criminal cases.

First, the differences between circuit means and state means tend to be larger for criminal cases, as exemplified by the Second and Ninth Circuits. Previously, homogeneous circuits such as the Third and Fifth Circuits also reflect larger mean differences between state and circuit. Only the First and Seventh Circuits are characterized by a reduced propensity heterogeneity.

Second, dramatic shifts between mean liberal propensity for all cases and mean liberal propensity for criminal cases occur for individual states. This shift is typified by Arizona with a mean liberal propensity score of 66 for all cases reduced to a score of 17 for criminal cases.

In sum, for criminal cases, one may say that, while not statistically significant at the .05 level, inter-state differences do help explain variance in opinion-writer liberal propensity scores. Further, differences among states occur among states within the same circuits. The question of among state differences in opinion-writer liberal propensity is addressed next for class discrimination.

TABLE 5 (d)

AMONG STATE DIFFERENCES - CRIME

	N	\bar{X}	S	Δ		N	\bar{X}	S	Δ		N	\bar{X}	S	Δ		N	\bar{X}	S	Δ		N	\bar{X}	S	Δ
<u>FIRST</u>	22	23	27		<u>THIRD</u>	83	28	32		<u>FIFTH</u>	95	33	34		<u>SEVENTH</u>	38	34	35		<u>NINTH</u>	93	28	33	
ME.	3	10	11	-13	DEL.	8	48	45	+20	ALA.	8	11	20	-22	ILL.	25	37	37	+3	ALAS.	7	37	40	+9
MASS.	11	24	29	+1	N.J.	18	30	36	+2	FLA.	22	45	33	+12	IND.	8	39	44	+5	ARIZ.	5	17	29	-11
N.H.	2	33	47	+10	PA.	53	26	29	-2	GA.	15	28	32	-5	WISC.	5	29	18	-5	CAL.	48	27	35	-1
R.I.	2	38	53	+15					$\bar{X}\Delta= 8 $	LA.	14	40	39	+7					$\bar{X}\Delta= 4.3 $	HAW.	3	59	8	+31
P.R.	3	17	17	-6						MISS.	6	21	19	-12						ID.	4	13	25	-15
V.I.	2	25	35	+2						TEX.	29	28	33	-5						MON.	5	19	26	-9
				$\bar{X}\Delta = 7.8 $																NEV.	2	61	55	+33
																				ORE.	5	08	14	-20
																				WASH.	9	28	28	-
																				GUAM	2	58	12	+30
																								$\bar{X}\Delta= 17.6 $
<u>SECOND</u>	79	26	29	Δ	<u>FOURTH</u>	45	27	27	Δ	<u>SIXTH</u>	49	37	37	Δ	<u>EIGHTH</u>	48	24	27	Δ	<u>TENTH</u>	25	27	29	Δ
CONN.	7	47	30	+21	MD.	8	18	19	-9	KT.	6	13	12	-24	ARK.	6	16	20	-8	COL.	4	32	10	+5
N.Y.	67	23	28	-3	N.C.	8	41	33	+14	MI.	18	35	35	-2	IWA.	5	37	41	+13	KANS.	8	17	19	-10
VT.	1	75	-	+49	S.C.	6	35	35	+8	OH.	16	52	39	+15	MINN.	7	21	25	-3	N.M.	3	33	58	+6
				$\bar{X}\Delta= 24.3 $	VA.	12	18	23	-9	TENN.	10	40	42	+3	MO.	17	20	23	-4	OKLA.	6	22	29	-5
					W.V.	8	23	26	-4											UTH.	2	70	42	+43
									$\bar{X}\Delta= 8.8 $											N.D.	5	45	39	+21
																				WY.	2	17	24	-10
																				S.D.	9	18	24	-6
																								$\bar{X}\Delta= 8.1 $

F=1.21 *not signif.
at .05

E² = .10

Differences Among States-Class Discrimination

Overall, among state differences in mean liberal propensity are significant at the .05 level. Thus, hypothesis 5b may be accepted for the class discrimination category. Further, 12 percent of the among judge variance in class discrimination cases can be explained by knowing the state in which each judge presides.

In exploring among-state differences in mean liberal propensity for class discrimination cases, particular attention will be devoted to the Fifth Circuit. The high liberal propensity reported for the circuit in this case category raised the question of whether this high mean score (.54) tended to obscure large differences among states within the circuit. Table 5(e) indicates that it does not. In addition to having the highest mean liberal propensity in class discrimination cases, the Fifth Circuit has the lowest propensity heterogeneity among states within it. Thus, whether because of the nature of the cases generated by the circuit's environment or because of the need for judges in this circuit to justify their liberal decisions, one may conclude that the Fifth circuit and the states within that circuit display a surprisingly high mean liberal propensity in class discrimination opinions.

An interesting pattern also develops for border states in the class discrimination category. Arkansas (Eighth), Tennessee and Kentucky (Sixth) and North Carolina (Fourth) all reflect class discrimination liberal propensity scores well above their circuit mean. The reasons for this are unclear. However, for all cases and for criminal cases Arkansas, Tennessee, and Kentucky were below their circuit means. Thus, the high class discrimination liberal propensities would seem to reflect

TABLE (e)

AMONG STATE DIFFERENCES - CLASS DISCRIMINATION

[illegible]

conditions peculiar to class discrimination cases. Further, cultural, historical and socio-economic similarities between these states and the Fifth Circuit states suggest that similar conditions may have produced similar policy propensities in class discrimination cases.

The Fifth Circuit's small difference among states is shared by the Third and Seventh Circuits. However, differences within the Ninth and First Circuits remain quite large, as do differences within the Eighth Circuit.

Within the Eighth Circuit, Iowa stands out as substantially more liberal than its neighbors, while Missouri and North Dakota are well below the circuit mean. In the Ninth Circuit, Arizona, Hawaii, and Montana are once again atypically liberal. Rhode Island is more liberal than are its neighbors in the First Circuit while Connecticut and Vermont have higher mean liberal propensity scores than does New York in the Second Circuit.

Before turning to the Expression category, a tentative pattern may be noted for several states. States such as Iowa, Utah, Montana, Rhode Island, and North Carolina are moderately but consistently above their circuit means for all cases, for criminal cases, and for class discrimination cases. As analysis proceeds, attention will be focused on these states to determine whether this pattern continues.

Differences Among States-Expression

The pattern of above-the-mean liberalism is maintained for all five states in expression cases. However, the most impressive message of Table 5(f) is the overall relationship between expression liberal propensity variance and differences among states. The differences among

TABLE 5 (f)

AMONG STATE DIFFERENCES - FREEDOM OF EXPRESSION

[illegible]

states are significant at the .01 level and account for 12 percent of among judge variance in freedom of expression cases.

As might be expected, the large among state differences are also reflected in differences among states within the same circuit. The Third, Fourth, Fifth and Seventh Circuits retain fairly homogeneous liberal propensity scores, but mean differences among states in other circuits are large, exemplified by the 23.5 average difference for states within the Ninth Circuit, where Hawaii and Montana continue to stand well above the circuit mean. Likewise, Massachusetts and New York continue to rank considerably below their New England neighbors, as does Puerto Rico.

In sum, spatial differences defined by state are important predictors of freedom of expression liberal propensity scores than were spatial differences defined by circuit. Attention is now turned to the effects of among-state differences on variance in liberal propensity for labor opinions.

Among State Differences-Labor Opinions

Overall, among state differences explain 13 percent of the variance in labor liberal propensity. However, the F statistic is not significant indicating a large amount of within state variance relative to among state variance. Thus, hypothesis 5b must be rejected for the labor category.

As in chapters three and four, labor remains a somewhat perplexing category. Several of the patterns established for other case categories disappear or are reversed for labor opinions.

First, circuits which have recorded low propensity heterogeneity scores in other case categories display much more heterogeneity in the

TABLE 5 (g)

AMONG STATE DIFFERENCES - LABOR

	N	\bar{X}	S	Δ		N	\bar{X}	S	Δ		N	\bar{X}	S	Δ		N	\bar{X}	S	Δ		N	\bar{X}	S	Δ
<u>FIRST</u>	20	61	35		<u>THIRD</u>	73	48	36		<u>FIFTH</u>	73	42	42		<u>SEVENTH</u>	36	37	38		<u>NINTH</u>	50	39	42	
ME.	2	75	35	+14	DEL.	6	28	44	-20	ALA.	8	38	44	-4	ILL.	22	30	33	-7	ALAS.	3	33	58	-6
MASS.	10	50	36	-11	N.J.	13	38	34	-10	FLA.	13	47	48	+5	IND.	7	55	47	+18	ARIZ.	0	0	0	-
N.H.	2	88	18	+27	PA.	51	55	34	+7	GA.	13	26	39	-16	WISC.	7	42	42	+5	CAL.	22	33	38	-6
R.I.	2	56	62	-5			$\bar{X}\Delta = 12.3 $			LA.	14	47	36	+5		$\bar{X}\Delta = 10 $				HAW.	0	0	0	-
P.R.	4	70	32	+9						MISS.	5	70	45	+28						ID.	3	33	58	-6
V.I.	0	0	0	-						TEX.	19	44	44	+2						MON.	2	71	06	+32
				$\bar{X}\Delta = 13.2 $						CZ	1	67	-	+25						NEV.	4	75	50	+36
														$\bar{X}\Delta = 12.1 $						ORE.	6	29	26	-10
																				WASH.	6	67	52	+28
																				GUAM	0	0	0	-
																							$\bar{X}\Delta = 17.7 $	
<u>SECOND</u>	75	40	35		<u>FOURTH</u>	38	44	42		<u>SIXTH</u>	42	49	37		<u>EIGHTH</u>	43	44	39		<u>TENTH</u>	20	34	39	
CONN.	7	45	27	+5	MD.	7	44	37	-	KT.	5	31	26	-18	ARK.	7	23	37	-21	COL.	-	42	37	+8
N.Y.	67	40	35	-	N.C.	8	68	37	+24	MI.	13	59	43	+10	IWA.	5	37	41	-7	KANS.	5	30	45	-4
VT.	0	0	0		S.C.	5	27	43	-17	OH.	14	43	36	-6	MINN.	8	63	33	+19	N.M.	0	0	0	-
				$\bar{X}\Delta = 2.5 $	VA.	11	51	50	+7	TENN.	9	52	38	+3	MO.	17	37	38	-7	OKLA.	6	49	47	-15
					W.V.	7	20	28	-24					$\bar{X}\Delta = 9.3 $	NEB.	3	89	19	+45	UTH.	0	0	0	-
									$\bar{X}\Delta = 18 $						N.D.	2	67	47	+23	WY.	2	17	24	-17
															S.D.	1	0	0	-49				$\bar{X} = 11.0$	
																							$\bar{X}\Delta = 23.7 $	

F=1.19(not signif.@.)

 $E^2 = .13$

labor category. This is especially true of the Third, Fourth, and Fifth Circuits.

Second, among state differences within these circuits raise some interesting questions. Delaware, South Carolina, and West Virginia all have liberal propensity scores well below their circuit means. One wonders to what extent this reflects anti-union sentiment on the part of dominant manufacturing, textile, or mining interests.

The case of Delaware is particularly interesting when contrasted with Michigan in the Sixth Circuit. Delaware has been at or above the Third Circuit liberal propensity mean for other case categories while Michigan has tended to fall slightly below the Sixth Circuit Mean. Yet, in labor cases Michigan's mean liberal propensity score is 31 points above Delaware. This would seem to reflect the relative strength of organized labor in the two states and to suggest a link between the state's economic environment and its judges' labor policy propensities which should be examined in future studies.

Third, states like Iowa which have displayed moderate but consistent liberal tendencies across other case categories have moderately conservative mean scores for labor opinions, while other states, such as North Carolina and Minnesota retain their relative liberal propensity patterns. This suggests that under control for circuit and state, party differences may be important for explaining among judge variance in liberal propensity. This possibility is examined in the last half of this chapter; however, before turning to party differences, among state differences in mean liberal propensity are examined for local economic regulation cases.

Among State Differences-Local Economic Regulation

As indicated by Table 5(h), both among-state and within-state variance is large in local economic regulation cases. In fact, all circuits reflect a substantial heterogeneity of liberal propensity means for this category. Thus the F statistic is not significant and hypothesis 5b must be rejected for local economic regulation cases even though among state differences account for 21 percent of the among judge variance in this category.

Some states, such as Utah, continue to demonstrate liberal propensity means inconsistent with their circuit mean and with other states in their circuit. However, as with the labor category, several patterns established for other categories tend to disappear or be reversed. For example, in the Eighth Circuit, Iowa falls substantially below the circuit mean while Missouri and Arkansas fall substantially above the circuit mean. Likewise, the relationship between Massachusetts and its neighbors is altered in the First circuit.

Delaware and West Virginia reflect low liberal propensity means similar to their position in labor cases. Yet, other states, such as Mississippi and Indiana, reflect low liberal propensity means which seem in direct contradiction to their high liberal propensity for labor cases.

In sum, the local economic regulation differences among states are consistently large both within and among circuits. Furthermore, as with analysis by circuit, they are largely inconsistent with the labor case categories.

TABLE 5h

AMONG STATE DIFFERENCES - LOCAL ECONOMIC REGULATION

	N	\bar{X}	S	Δ		N	\bar{X}	S	Δ		N	\bar{X}	S	Δ		N	\bar{X}	S	Δ		N	\bar{X}	S	Δ
<u>FIRST</u>	12	81	32		<u>THIRD</u>	41	76	39		<u>FIFTH</u>	57	62	42		<u>SEVENTH</u>	24	67	48		<u>NINTH</u>	32	63	43	
ME.	1	100	0	+19	DEL.	3	33	58	-43	ALA.	2	50	71	-12	ILL.	14	69	50	-3	ALAS.	6	40	32	-23
MASS.	6	92	20	+11	N.J.	8	72	38	-4	FLA.	16	69	36	+7	IND.	3	33	58	-34	ARI.	-	-	-	-
N.H.	1	75	0	-6	PA.	26	86	33	+10	GA.	9	53	51	-9	WISC.	6	83	41	+16	CAL.	19	71	47	+8
R.I.	1	100	-	+19						LA.	12	76	39	+19						HAW.	1	67	0	+4
P.R.	3	50	50	-31						MISS.	6	25	42	-37						IDH.	1	60	0	-3
V.I.	3	33	29	-48						TEX.	13	64	44	+2						MON.	1	0	0	
				$\bar{X}\Delta = 22.3 $						CZ	-	-	-	-						NEV.	1	0	0	
																				ORE.	3	100	0	+37
																				WASH.	3	56	51	-7
																				GUAM	1	100	0	+37
																								$\bar{X}\Delta = 17.0 $
<u>SECOND</u>	36	74	42		<u>FOURTH</u>	15	77	42		<u>SIXTH</u>	30	51	48		<u>EIGHTH</u>	27	70	40		<u>TENTH</u>	16	71	43	
CONN.	4	75	50	+1	MD.	3	67	58	-10	KT.	4	17	33	-34	ARK.	3	83	29	+13	COL.	5	95	11	+24
N.Y.	30	69	38	-5	N.C.	2	100	0	-10	MI.	14	48	50	-3	IWA.	3	33	29	-37	KAN.	2	50	71	-21
VT.	1	100	-	+26	S.C.	4	88	25	+11	OH.	6	58	49	+7	MINN.	6	67	41	-3	N.M.	1	100	0	+29
				$\bar{X}\Delta = 11.0 $	VA.	3	100	-	+23	TENN.	6	75	42	+24	MO.	10	80	42	+10	OKLA.	6	59	46	-12
					W.V.	4	50	58	-27						NEB.	3	78	38	+8	UTH.	1	100	-	+29
															N.D.	-	-	-	-	WY.	1	0	-	-70
															S.D.	2	50	70	-20					$\bar{X}\Delta = 30.8 $
																								$\bar{X}\Delta = 15.2 $

F=1.31 (Not signif.
at .05)
E² = .21

Summary of Among-State and Among-Circuit Differences

In absolute terms, one might argue that among state differences do not explain a great deal of variance in opinion-writer liberal propensity scores. However, in comparison with the effects of judicial background characteristics as reported in chapters three and four, spatial differences explain a substantial amount of variance.

Hypothesis 5b, that among state variance would be significantly greater than within state variance, was rejected for all cases; however, as with 5a, it was accepted for class discrimination and freedom of expression cases. Further, differences among states explain more variance than do differences among circuits, reflecting the substantial among state variance and propensity heterogeneity within circuits. The amount of variance explained and the amount of propensity heterogeneity is greater for specific categories than for all cases. Among state differences are particularly valuable in explaining variance in freedom of expression, class discrimination and local economic regulation cases.

As with the analysis by circuit, among-state patterns of relative liberal propensities were not maintained across case categories. This breakdown was especially apparent between labor cases and economic regulation cases.

The relatively large amount of among judge variance explained by among-state differences suggests several possibilities for future research with the state as the unit of analysis. Further, certain similarities among states suggest the possibility that regional patterns of judicial policy propensity homogeneity which cross circuit boundaries may be established. These and other possibilities will be

discussed in the concluding section of this chapter. However, before turning to suggestions for future research, the effects of party affiliation will be explored under controls for spatial differences.

Party Differences by Circuit

In chapters three and four, an opinion writer's party affiliation was found to be of little value in predicting either the liberal/conservative nature of an opinion or the opinion-writer's liberal propensity. In the second part of this chapter, spatial differences were found to explain substantial amounts of variance in liberal propensity. Therefore, the third part of this chapter is devoted to exploring mean liberal propensity differences between Democratic and Republican judges under controls for circuit.

In controlling for jurisdiction and party, data reduction is substantial. Therefore, no measures of association, explained variance or statistical significance will be reported. Further, cell sizes are too small to report party differences under controls for each state. However, among state differences are reported in Appendix B and specific within differences may be referred to in discussing patterns of within circuit differences between parties.

The number of judges, mean liberal propensity score, standard deviation and difference between the party means will be presented in tabular form by circuit. While these descriptive statistics are of limited predictive value, they are consistent with the purpose of this section--i.e., to explore party differences under control for spatial differences in the hope of locating spatial differences in the link

between party affiliation and judicial policy propensities.

In section one of this chapter, among-circuit differences were found to be of some limited explanatory value. However, a great deal of variance existed within circuits. In part two, part of this within circuit variance was explained by differences among states within each circuit. However, most of the variance remained unexplained. Thus, this section explores the extent to which within circuit variance reflects differences in liberal propensity between Democratic and Republican opinion writers. Table 5(i) reports these differences for all cases.

TABLE 5(i)
Liberal Propensity Differences
Between Democrats and Republicans by
Circuit-All Cases

<u>Circuit</u>	<u>Democrats</u>			<u>Republicans</u>			<u>Party*</u> Δ
	<u>N</u>	<u>\bar{X}</u>	<u>s</u>	<u>N</u>	<u>\bar{X}</u>	<u>s</u>	
First	22	51	32	15	38	25	+13
Second	52	49	18	47	43	22	+ 6
Third	38	44	15	56	42	17	+ 2
Fourth	40	44	26	29	35	31	+ 9
Fifth	98	43	21	38	40	26	+ 3
Sixth	43	52	21	35	38	33	+14
Seventh	29	52	21	27	46	27	+ 6
Eighth	35	46	21	39	46	23	0
Ninth	64	50	24	62	41	30	+11
Tenth							
D.C.	22	50	17	18	50	25	0

* Party Δ = (Demo. \bar{X} - Repub. \bar{X})

As indicated by Table 5(i), for all cases the mean liberal propensity is larger for Democrats than for Republicans in each circuit, except the Eighth Circuit and the Washington D.C. Circuit. However,

in most circuits the differences are hardly overwhelming. The mean difference is 6.6 percent. Only in the First, Sixth, Ninth and Tenth Circuits do these differences exceed ten percent. Patterns in this data are difficult to discern. However, it is interesting to note that with the exception of the Eighth Circuit, those circuits with the smallest differences between party means also tend to be the circuits which had the smallest propensity heterogeneity among states. (See Table 5(c).) For example, the average difference among states in the Fifth Circuit was 2.3 percent, while only three percentage points separate Democrats and Republicans in that circuit. On the other hand, large among-state differences in the First, Ninth and Tenth Circuits are reflected in large between party differences for each of these circuits. To this writer, these similarities suggest that party differences may not be distributed evenly within circuits. Rather, they may coincide with differences among states within circuits. Systematic exploration of this possibility is outside the scope of this chapter and the data; however, in examining party differences by circuit for each of the five aggregated case categories, reference will be made to party differences in specific large population states.

As would be expected from earlier analysis, within circuit party differences in mean liberal propensity are more impressive for specific case categories. Differences for each case category are presented in Table 5(j). Discussion of these differences will be organized by case category.

Criminal Defendant

The average between party differences is much greater for the crime

TABLE 5 (j)

PARTY DIFFERENCES BY CIRCUIT

RC.	CRIME					CLASS DISCRIM.					EXPRESSION					LABOR					REGULATION				
	DEM.		REPUB.			X		S			X		S			X		S			DEM.		REP.		PARTY
	X (N)	S	X (N)	S		X (N)	S	X (N)	S		X (N)	S	X (N)	S		X (N)	S	X (N)	S		X (N)	S			
RST	29 (10)	25	10 (9)	12	+19	56 (12)	31	29 (10)	30	+27	78 (10)	32	69 (8)	38	+14	77 (11)	34	31 (7)	19	46	38 (6)	21	75 (4)	(50)	+13
COND	28 (43)	28	25 (32)	31	+3	36 (46)	28	37 (45)	33	-1	42 (33)	39	47 (38)	38	-5	49 (34)	35	32 (37)	34	+17	71 (17)	47	70 (16)	40	-5
IRD	30 (39)	32	29 (41)	33	+1	41 (35)	33	31 (46)	35	+10	53 (24)	39	57 (31)	42	-4	44 (30)	30	52 (40)	40	-8	81 (17)	36	68 (21)	42	+13
URTH	29 (28)	26	23 (17)	30	+6	40 (33)	35	26 (18)	30	+14	51 (24)	39	35 (41)	13	+16	49 (25)	44	35 (13)	39	+14	85 (10)	34	60 (5)	55	+25
FTH	31 (74)	33	40 (20)	37	-9	55 (73)	35	48 (24)	35	+7	50 (52)	39	33 (17)	34	+17	45 (53)	42	35 (19)	43	+10	68 (42)	41	43 (14)	40	+25
XTH	39 (38)	36	28 (14)	39	+11	51 (33)	36	35 (17)	38	+16	51 (24)	40	24 (11)	42	+27	52 (26)	36	44 (15)	41	+8	59 (21)	46	33 (9)	50	+26
VENTH	44 (20)	39	23 (18)	23	+21	52 (23)	38	52 (16)	39	0	39 (21)	42	49 (14)	44	-10	45 (20)	38	28 (16)	37	+17	67 (15)	49	67 (9)	50	-
3HTH	26 (27)	32	19 (19)	20	+7	44 (20)	38	32 (17)	33	+12	56 (16)	35	29 (14)	35	+27	40 (23)	40	50 (19)	40	-10	82 (15)	32	59 (12)	45	+28
NTH	36 (46)	31	22 (41)	34	+14	53 (47)	35	45 (39)	43	+8	46 (32)	40	40 (30)	42	+6	41 (27)	44	38 (21)	42	+3	89 (14)	35	57 (15)	98	+27
YTH	32 (15)	35	19 (10)	16	+13	59 (12)	39	28 (10)	34	+26	17 (19)	33	24 (9)	42		49 (10)	45	24 (10)	33	+20	84 (8)	35	57 (8)	98	+27
	57 (13)	41	16 (8)	21	+41	54 (14)	32	58 (14)	36	-4	59 (13)	42	42 (11)	45	+17	17 (6)	41	75 (6)	42	-58	37 (5)	42	68 (8)	40	-28
$\bar{X} \Delta = 13.1 $ $\bar{X} \Delta = 11.3 $ $\bar{X} \Delta = 13.9 $ $\bar{X} \Delta = 19.2 $ $\bar{X} \Delta = 20.6 $																									

category than for all cases. Even given the relatively large standard deviations, the differences for most circuits are substantial. This suggests an interaction between the effects of party and circuit which should be explored in future studies.

In the Fifth Circuit, Republicans have a higher mean liberal propensity than do Democrats. The reasons for this exception are difficult to project. However, three possible explanations should be explored. The most plausible explanation may lie in time differences, with a disproportionate percentage of southern Republicans acting under the Warren Court guidelines.

Alternatively, these between party differences may simply reflect differences among states within the circuit, with Republican judges located in the more liberal states. This possibility is consistent with the relatively high (10.5) among state heterogeneity reported in Table 5(d). Indeed, examination of specific states indicates that six Republican opinion writers in Florida have a mean liberal propensity score of seventy one, which artificially inflates the Republican circuit mean.

Finally, if one assumes that Republicans have weaker local ties in the South, these differences may reflect the influence of localism on Democrats as reported by Vines.²¹ Since Vines' study dealt with civil rights cases, this possibility will be explored by noting between party differences for class discrimination cases. If localism is associated with relative Democratic conservatism it should be reflected in class discrimination cases.

Class Discrimination

Localism as described by Vines is not reflected in Fifth Circuit class discrimination cases. The mean liberal propensity for Fifth Circuit Democrats is higher than that for Republicans. Indeed, as would be predicted by chapter three, the mean liberal propensity is substantially higher for Democrats in most states. However, there are notable exceptions.

First, the Republican mean liberal propensity is higher than the Democratic mean in the Second Circuit. In all probability this is a reflection of the liberal state Republican parties in New York and Connecticut and liberal Republican senators such as Jacob Javits and Lowell Wicker. In fact, Connecticut Republicans have a liberal propensity mean of 65 for class discrimination cases while the mean for Democrats is forty eight. It will be interesting to note whether this pattern is maintained for other case categories, especially for labor and regulation cases.

Republicans are also more liberal than Democrats in the Washington D.C. Circuit. This represents a total reversal of the situation for criminal cases. Such a dramatic difference raises the possibility that the differences in liberal propensity mean reflect differences in the time opinions were issued. A large proportion of class discrimination litigation has developed since the middle sixties, while crime litigation is spread more evenly over time. This possibility can be examined in chapter six. It is interesting to note, however, that the selection process in Washington D.C. does not involve a senior senator. Further, variance within the circuit cannot be a function of among-state differ-

ences; thus, judges may more accurately reflect the policy propensity of the national party and/or their appointing president than is the case for other circuits.

While most other circuits reflect a fairly consistent party disparity pattern between criminal cases and class discrimination cases, the Seventh Circuit does not. A 21 point disparity for criminal cases is reduced to zero for class discrimination cases. No speculation as to the reasons for this reduction will be offered at this time; however, it is interesting to note that only the Fifth Circuit had a higher mean liberal propensity score for class discrimination cases than did the Seventh Circuit. Further, the among-state heterogeneity score in the Seventh Circuit was quite low (4.3), suggesting a fairly high and homogeneous liberal propensity for class discrimination cases throughout the circuit.

Intuition and judicial behavior literature²² cited in chapter one would argue that liberal patterns established for class discrimination cases should maintain across freedom of expression cases. This possibility is explored next.

Freedom of Expression

Certain similarities of disparity patterns do exist between the class discrimination and freedom of expression categories. Democrats remain more liberal than Republicans in most circuits. The pattern of Republican liberalism is maintained for the second circuit. However, several shifts in relative liberalism also occur.

First in the Third and Tenth circuits Democrats shift from the more

liberal to the more conservative position. It is interesting to note that in the Tenth Circuit the mean is quite low for both parties; in fact, Democrats in the Tenth Circuit have the lowest liberal propensity mean for either party in any circuit. The relatively high standard deviations for both parties suggest substantial variance within each party. Further, both parties are represented by a small number of opinion writers. Thus, what appears to be party differences may be artifacts of differences between states or individual judges separated by long time periods.

The Third Circuit shift is more difficult to explain. A relatively large number of judges is divided fairly evenly among the two parties. Further, standard deviations are not large relative to mean scores, indicating relative homogeneity within each party. Thus, the most likely explanation for the Third Circuit reversal lies in either differences across time or differences among states within the circuit. Differences across time will be explored in chapter six; however, the analysis reported in step three of this chapter suggests that the shift may reflect differences among the circuit's three states. Indeed, Table 5(f) indicates that Pennsylvania returned 93 percent (55/59) of the circuit's freedom of expression opinions and that its mean liberalism score was well below both Delaware and New Jersey for freedom of expression cases. However, inspection of specific states within the circuit indicates that Pennsylvania Democrats mean score was 57, while the mean for Republicans was fifty four. In Delaware, on the other hand, a Republican mean of 67 contrasts sharply with the Democratic mean of twenty five.

Second, a shift occurs in the opposite direction for the Washington D.C. Circuit--i.e., Democrats were more conservative in class discrimination cases but are substantially more liberal in freedom of expression cases. Again, the absence of a senior senator in the appointment process and the lack of among state variation limit the possible explanations for the party differences.

An interesting pattern develops when one focuses on Republicans in freedom of expression cases. In the First, Second, Third, and Seventh Circuits, Republican mean liberal propensities are quite high, both absolutely and relative to the Democrats. Interestingly, these circuits include the states which have been identified with the "liberal" wing of the party, supporting the party's more liberal candidates for the presidency. Only the Sixth Circuit is an exception to this pattern. Conversely, in the less industrialized Southern, Midwestern and Western Circuits identified with the more "conservative" wing of the party, the expression liberal propensity means are quite low, in absolute terms and relative to the Democrats. In fact, the Republican mean for the three Northeastern Circuits is 57 while the Republican mean liberal propensity for the other circuits is 33. Thus, for expression cases, region defines major within party differences for Republican opinion writers. It will be interesting to note whether this same pattern is maintained for labor and local economic regulation cases.

Labor v Management

The regional split within the Republican party is not maintained for labor cases. As would be predicted by Richardson and Vines²³ and

by other studies reviewed in chapter one, Democratic opinion-writers tend to be more liberal than Republicans in most circuits. However, exceptions to this tendency are found in the Third and Eighth Circuits.

The explanation for this disparity in the Third Circuit may lie in among-state differences reported in part three of this chapter. Specifically, Delaware and New Jersey rank far below Pennsylvania in mean liberal propensity for labor cases. However, inspection indicates that the Republican mean is higher for all three states in this circuit.

The Eighth Circuit disparity is equally surprising and difficult to explain. In their study of federal district courts in the Third, Fifth and Eighth Circuits, Richardson and Vines found Democrats more liberal than Republicans. However, no controls were applied to differentiate among circuits thus Republican liberalism in the Third and Eighth Circuits may have been obscured by Democratic liberalism in the Fifth circuit. Further, the time span of the earlier study was much shorter than the time period considered here.²⁴ Thus, the findings here do not necessarily contradict those of Richardson and Vines.

The differences in mean liberal propensity among states within the regionally diverse Eighth Circuit were very large for labor cases ($\bar{X}\Delta = 23.7$). These disparities take on a regional character as exemplified by the difference between Arkansas ($\bar{X} = 23$) and Nebraska ($\bar{X} = 89$). Thus what appear to be party differences seem to reflect among state differences within the circuit. Further, the relationship between the two parties may vary over time. This possibility will be examined in chapter six.

Economic Regulation

Just as one might expect, certain consistencies of disparity patterns between class discrimination and freedom of expression cases, intuition and work by judicial behaviorists²⁵ would suggest similarities between the labor and economic regulation categories. Table 5(j) suggests, however, that a number of inconsistencies occur. For example, the relative positions of Democrats and Republicans is reversed for the Second, Third, and Eighth Circuits.

As would be predicted by Chapter Four, the disparities between parties are greater for this category than for any other category. Also, with the exception of Washington D.C. and the Second Circuit, they follow predicted party lines, with Democrats' liberal propensity means substantially higher than Republicans. In fact, with the exceptions noted, the disparities are remarkably consistent.

The case of the Second Circuit is less surprising when one notices that a pattern of geographically defined differences within the Republican party appears for local economic regulation cases just as it did for freedom of expression cases. Thus, Washington D.C. and the Second Circuit's negative disparities say more about Washington D.C. and Second Circuit Republicans. Indeed, the Second Circuit Republican mean is only slightly higher than the Republican means in the First, Third, Seventh, and Washington D.C. Circuits.

The findings and implications for future research generated by this chapter will be summarized in chapter seven. However, before presenting this summary, the effects of time differences on judicial policy propensities is explored in chapter six.

NOTES

¹Kenneth Dolbeare, "The Federal District Courts and Urban Public Policy: An Exploratory Study," in Joel Grossman and Joseph Tanenhaus (eds.), Frontiers of Judicial Research (New York: John Wiley and Sons, 1969), pp. 373-404.

²Kenneth Vines, "Federal District Judges and Race Relations Cases in the South," Journal of Politics (1964), pp. 337-57.

³Richard Richardson and Kenneth N. Vines, The Politics of Federal Courts (Boston: Little, Brown and Co., 1970).

⁴Localism was especially important in race relations cases in the South (Vines) and in governmental relations cases in urban areas (Dolbeare).

⁵Henry J. Abraham, The Judicial Process: An Introductory Analysis of the Courts of the United States, England, and France (New York: Oxford University Press, 1975), p. 151.

⁶*Ibid*, p. 159.

⁷See Daniel Elazar, American Federalism: The View from the States (New York: Thomas Crowell Co., 1966); Ira Sharkansky, Regionalism in American Politics (New York: Bobbs-Merrill, 1970).

⁸See Stephen Early, Constitutional Courts of the U.S. (Totowa, N.J.: Littlefield, Adams, 1972), p. 568; J. Eisenstein, Politics and the Legal Process (New York: Harper & Row, 1973), p. 146.

⁹See for example, Walter Murphy, "Lower Court Checks on Supreme Court Power," 53, American Political Science Review, 1959, 1030-1034.

¹⁰Vines, *op. cit.*, found such differences as did Jack Pelhason, 58 Lonely Men (New York: Harcourt, Brace and World, 1961).

¹¹Eisenstein, *op. cit.*, Robert A. Carp, "The Scope and Function of Intra Circuit Judicial Communication: A Case Study of the Eighth Circuit," Law and Society Review, #6, Feb. 1972.

¹²*Ibid*.

¹³ Richardson and Vines, pp. 96-97. It should also be noted that the Richardson and Vines data set was limited to opinions returned between 1957-1962.

¹⁴ For an account of circuit division conflicts, see Denise Bloom, "The Geographical Division of the Eighth Circuit Court of Appeals," Federal Judicial Center Research Report, Sept., 1979.

¹⁵ See Charles Bullock IV and Harrell Rodgers, Jr., Coercion to Compliance (New York: Lexington Books, 1976); also by the same authors Law and Social Change: Civil Rights Laws and Their Consequences (New York: McGraw-Hill, 1972).

¹⁶ See Peltason, op. cit., Herbert Jacob, "The Courts as Political Agencies, An Historical Analysis," Tulane Studies in Political Science (New Orleans, 1962) pp. 9-50; Vines, op. cit.

¹⁷ For a general review of this tendency, see S. Goldman and T. Johnige, The Federal Courts as A Political System (New York: Harper and Row, 1976). For a more specific treatment in school desegregation opinions, see Bullock and Rodgers, Coercion to Compliance, op. cit.

¹⁸ The influence of the local environment over the type of cases which reach the federal bench is reviewed by Stephen Flanders in "District Court Studies Project: Interim Report" Federal Judicial Center, June, 1976.; For an excellent general review of related literature see Russell R. Wheeler and Howard R. Whitcomb (eds.) Judicial Administration: Text and Readings (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1976), especially "The Literature of Judicial Administration: A Bibliographical Essay," pp. 289-312, by the editors.

¹⁹ The body of literature in this field is extensive. Representative work includes early work such as V.O. Key, Southern Politics (New York: Vintage Books, 1949); Richard Dawson and James Robinson, "Inter-Party Competition, Economic Variables, and Welfare Policies in the American States," Journal of Politics, 25 (May, 1963), pp. 265-89; Thomas Dye, Politics, Economics and the Public: Policy Outcomes in the American States, (Chicago: Rand McNally, 1966); Charles F. Cnudde and Donald J. Mc/Crane, "Party Competition and Welfare Policies in the American States," American Political Science Review, 63 (Sept. 1969), pp. 858-66. Most recently, see Michael S. Lewis-Beck, "The Relative Importance of Socioeconomic and Political Variables for Public Policy," American Political Science Review, Vol. 71, #2 (June, 1977), pp. 559-566.

²⁰ See Elazak, op. cit., Sharkansky, op. cit. Jack Walker's innovation diffusion emphasizes regional and state differences; see Walker, "The Diffusion of Innovations Among the American States," American Political Science Review, 67, (Dec. 1969) 880-99; for another point of view, see Virginia Grey, "Innovation in the States," American Political Science Review, 67 (Dec. 1973), 1174-85.

²¹K. Vines, op. cit.

²²See Glendon Schubert, The Judicial Mind (Evanstown: Northwestern University Press, 1963); and The Judicial Mind Revisited: Psychometric Analysis of Supreme Court Ideology (New York: Oxford University Press, 1974).

²³Richardson and Vines, pp. 99-101.

²⁴Ibid; The Richardson and Vines study was based on opinions returned between 1957-62.

²⁵Schubert, op. cit. For an emphasis on cases involving business regulation, see Harold Spaeth and David W. Rhode, Supreme Court Decision-Making (San Francisco: Freeman and Co., 1976).

CHAPTER SIX

The Effects of Time Differences on the Policy Propensity of Federal District Judges

In Chapter Five, a judge's geographic location proved to be a moderate predictor of his policy propensity. Further, the differences between Democrats and Republicans were greater in some circuits and states than in others.

In addition to spatial considerations, models of judicial policy outputs should include tests for temporal effects. As noted in Chapter One, the failure to examine differences over time is a major shortcoming in the study of judicial behavior and judicial policy-making on federal district courts to date. Chapter Six, therefore, explores the effects of time variance on conservative variance in federal district court policy outputs.

The study of temporal effects will consist of two parts. Part one is an exploration of the differences in the percentage of opinions which were liberal for each year from 1933-1972. Part two explores the question of whether between party differences increase during certain time periods. Both parts one and two conclude with summaries of findings and suggestions for further research.

As with earlier chapters, the specific questions to be examined, hypotheses to be tested and methods of data analysis will be presented separately for each part. It should also be noted that chapter six, like earlier chapters, is in every sense an exploration of previously unexamined policy propensities. As with other chapters, depth is sometimes sacrificed for breadth. More differences will be described than

can be carefully discussed; more questions will be raised than can be answered.

Part One

Differences Over Time in the Percentage of Opinions Which Are Liberal

The question addressed in part one is: To what extent has the percentage of opinions which were liberal fluctuated across time?

Since each opinion writer serves for several years, questions relating to differences among years focus on the opinion, rather than on the opinion writer as the unit of analysis. Certain problems in generalizing from opinions to the effects of background on judges' policy propensities were outlined in Chapter Four; however, in measuring differences between years, opinions will be used for two reasons. First, no attempt is made to generalize from opinions to a link between background and judges' policy propensities. Second, while the basic unit of analysis is the opinion, the question focuses on the aggregate of opinions issued during each year from 1933-1972. The nature of the question addresses differences between sets of opinions defined by year, not by opinion writer. Therefore, the opinion is not only acceptable as the unit of analysis, it is preferred.

Differences among years in the percentage of opinions which are liberal will be described and measured for all cases. Additionally, time differences will be described for the same aggregates of case sub-categories used to define the aggregated case categories analyzed in chapters four and five. Specifically, the effect of time differences on the liberal/conservative nature of an opinion will be described and

measured for the following case categories:¹

1. Support for Criminal Defendants (habeas corpus and conviction)
2. Class Discrimination (aliens, race, Civil Rights Act)
3. Free Expression (speech, religion)
4. Labor (Union v employer; employee v. employer)
5. Economic Regulation By State and Local Governments

As noted in chapter one, at least three aspects of "the times" may influence the liberal/conservative nature of federal district court policy statements. First, the environmental conditions associated with a given era or historical period help determine the type of case which courts will hear. For example, analysis will indicate that freedom of expression opinions increase when the United States is involved in a controversial war.

Second, general environmental conditions temper the courts' interpretation of both statutory and constitutional law. For example, courts' interpretation of the right to express dissent has fluctuated between periods of war and peace.²

Third, shifts in both personnel and the policy propensities of appellate courts occur across time.³ Thus, to the extent that federal district courts are guided by the policy propensities of appellate courts, one would expect policy propensities at the district court level to shift over time.

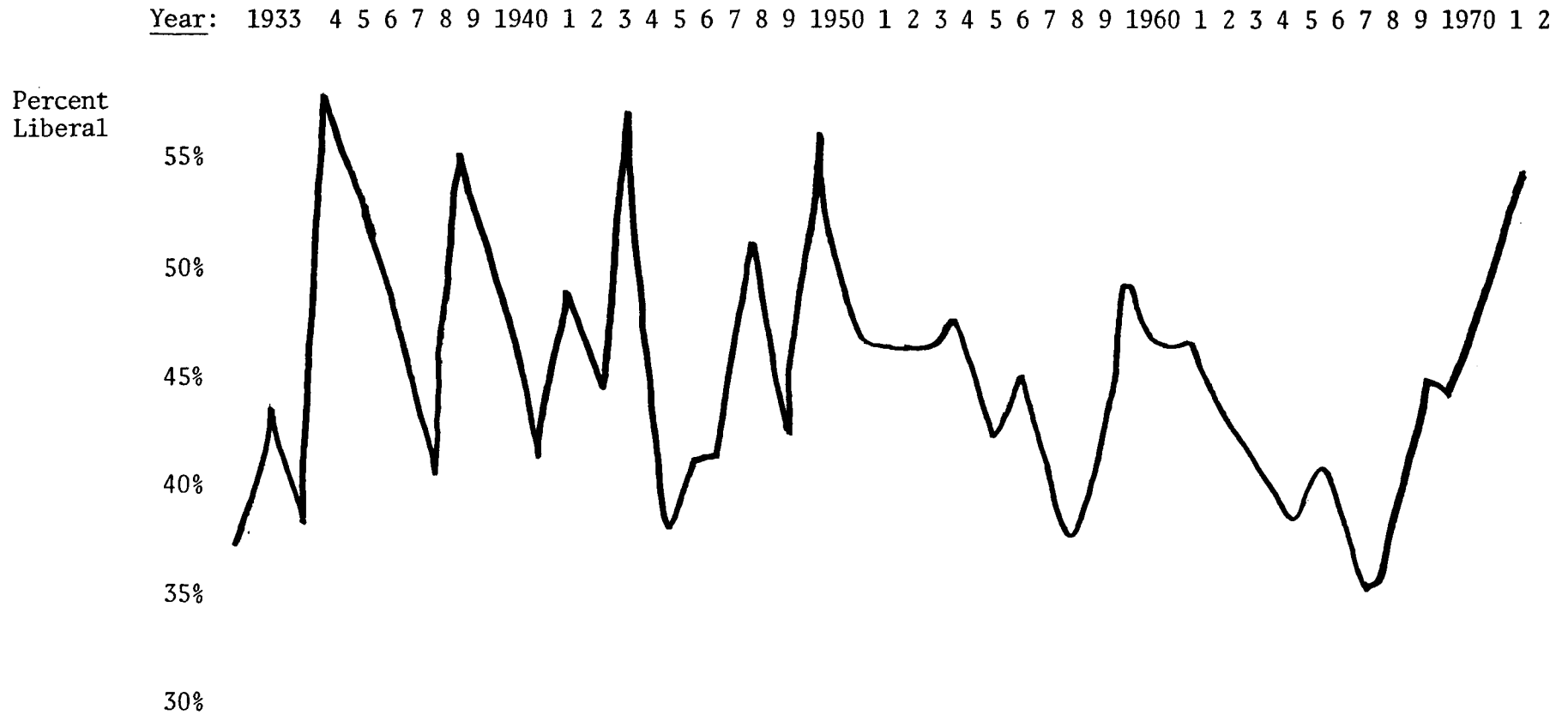
In spite of the evidence for the effects of time differences on federal courts, earlier studies of federal district courts have been based on limited time frames; thus, differences over time have not been systematically described for federal district courts.

Fortunately, the 40 year (1933-1972) time frame of this study facilitates a systematic description of the changes among years in both the number of opinions and the percentage of opinions which are liberal. This data is presented by graphing the univariate distribution of the percentage of liberal opinions by year and reporting the number of opinions returned for each year from 1933-1972. Additionally, the ability of the year an opinion was issued to predict whether it is liberal or conservative is reported by predicting the X and UC measures of association for all cases and for each case type.

The distribution for all cases is presented in Table 6(a). Table 6(a) makes two points quite clearly. First, the number of opinions issued per year has increased dramatically over the years. However, this increase has been somewhat uneven. For example, the number of opinions remained stable from 1963-1966. Then, from 1967-1971, the number of opinions increased by an average of more than 200 per year. Most recently, in 1972, the number of opinions was reduced by more than 250 from 1971. These trends in the number of opinions probably reflect the dramatic increase in federal district court caseload⁴ and the concerted effort by Warren Burger to reduce the workload on federal courts,⁵ both via Supreme Court decisions⁶ and through efficiency minded innovations such as the individual calendar developed by the Federal Judicial Center.⁷ It would be a mistake, however, to assume that either the rapid increase or the recent decrease in opinions is merely a function of increased case load. The patterns of alternating increases and plateaus may reflect shifts in the nature of statutes and appellate court policy propensities which require an inordinate number of statements to explicate

TABLE 6(a)

Percentage of Opinions Which are Liberal-By Year--All Cases



shifts in district court policy propensities. This possibility is supported by judicial administration studies which find no direct relationship between the number of cases resolved and the number of opinions issued.⁸ The relationship between opinion writing and care disposition should be the subject of careful attention in the future.

The second message of Table 6(a) is that while year is not a strong predictor over the entire time period ($\lambda=.01$), fairly clear trends appear in the percentage of each year's opinions which are liberal. Prior to 1951, these trends were mixed, with extreme fluctuations between adjacent years, but since 1951, fluctuations between adjacent years have been reduced. This reduced fluctuation may be partially a reflection of the stabilizing effect of the increasingly large number of opinions. However, more basic questions such as the effect of the courts' growing administrative apparatus on the courts' policy propensities are raised and should be examined in future studies.⁹ With the exception of 1960-62, a general conservative trend can be observed until 1969 which has marked the beginning of a steadily increasing percentage of liberal opinions. The reasons for these trends are difficult to project; however, at least two possibilities are indicated. First, the liberal trend which parallels the Burger Supreme Court and the Nixon Administration may simply reflect the fact that a large number of opinions are returned by Kennedy and Johnson appointees. Likewise, the declining liberalism paralleling the Kennedy/Johnson presidency and the Warren Court may reflect the dominance of Eisenhower appointees. The high liberal propensity of Johnson appointees reported in chapter four supports this possibility, as does the low liberal propensity reported

for Eisenhower appointees. However, several problems adhere to this explanation; for example, the increasing number of Nixon appointees since 1969 is not reflected in a declining rate of increase in liberal propensity.

Second, a more intriguing possible explanation lies in the general contrast between the policy propensities of the Supreme Court and the district courts over time. Specifically, the decline from 1959 to 1968 roughly parallels the tenure of the Warren Court, while the increase in liberal percentage from 1969-1972 roughly parallels the Burger Court. Perhaps federal district judges feel compelled to issue opinions in decisions which appear inconsistent with the appellate court's policy propensities. The possibility should be tested in future studies. In the descriptions of change across time for specific case categories which follow, one can determine whether the trends defined for all cases are repeated for specific types of cases. The first category to be examined is that of criminal cases,

Support for Criminal Defendants

In several respects, the pattern of temporal differences for criminal cases is quite similar to that for all cases. The number of opinions per year has increased steadily, with an accelerated increase in the late nineteen sixties. As with all cases, this trend has been reversed for criminal cases under the Burger Court; in fact, the 282 criminal opinions returned in 1972 are the fewest since 1967. The recent reduction in criminal opinions is consistent with Chief Justice Burger's well publicized efforts to reduce criminal case loads cited

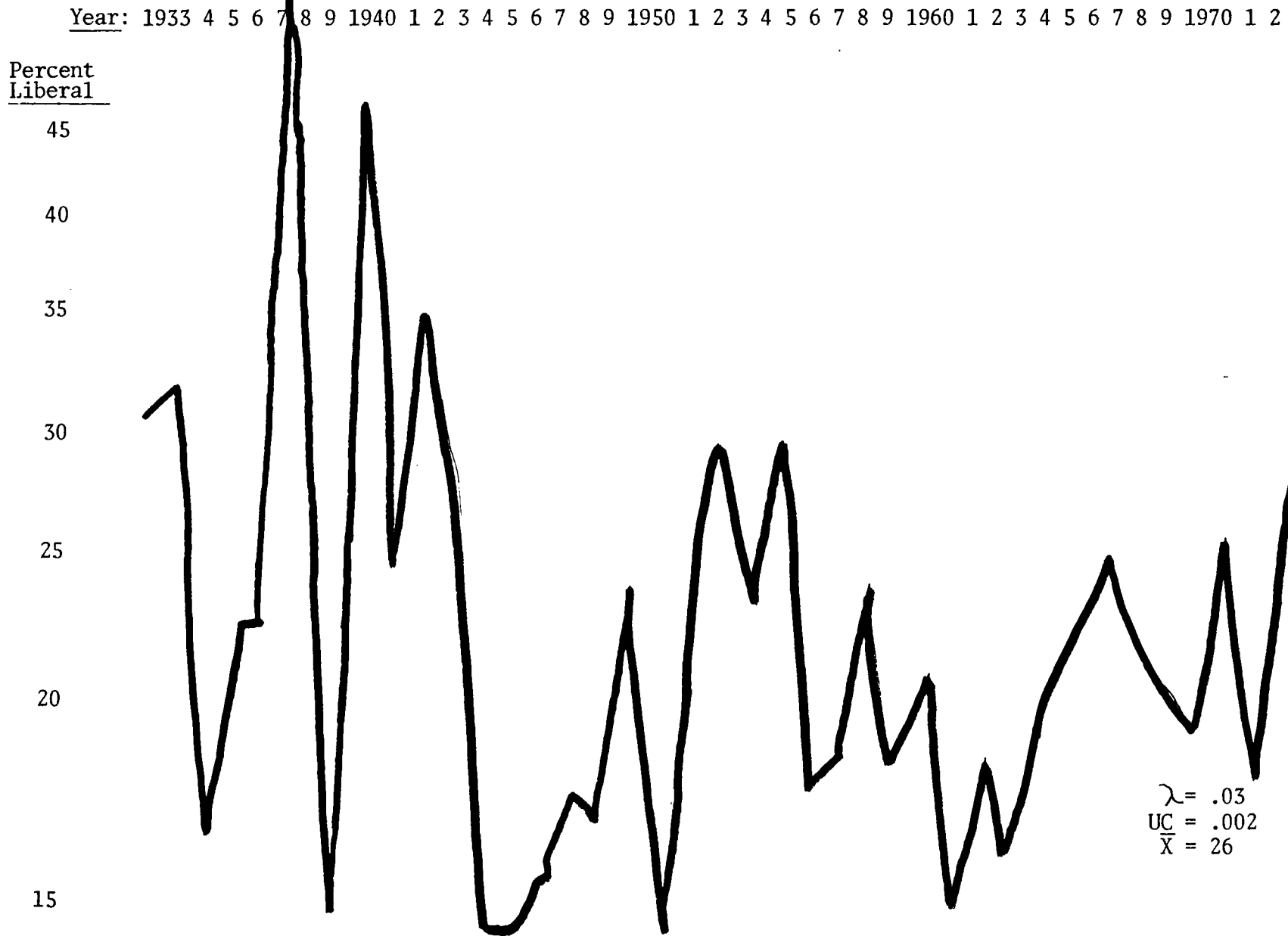
above. As with all cases, one cannot assume that a decrease in the number of opinions actually reflects a decrease in case load. The 1971 and 1972 Annual Reports of the Director of the Administrative Office indicate that in 1972 the federal district court criminal case load was, indeed, slightly below that of 1971. In fact, the decrease was slightly larger than the decrease in the number of opinions issued.¹⁰ The recent increase during the early years of the Burger tenure may have reflected the need for lower court judges to codify modifications of earlier policy statements or to justify distinctions between their rulings and the increasingly conservative criminal policy propensities of the Supreme Court. As with all cases, future research should clarify the relationship between caseload, opinion frequency, and appellate court supervision.

Yearly differences in the percentage of opinions which are liberal for criminal cases also resemble the differences for all cases. However, as with all cases, year is not a strong predictor of the liberal/conservative nature of an opinion. Fairly extreme fluctuations between adjacent years are sharply reduced after 1951. Further, a clear conservative trend is evident from 1951-1960. After 1960, the fluctuations among years are more extreme for criminal cases than for all cases. Nonetheless, the patterns remain similar, with an increasing liberalism from 1970-1972.

The pattern of increasing liberalism from 1960-1965 seems consistent with a series of Supreme Court rulings on the rights of criminal defendants during this time period;¹¹ however, neither the declining liberalism from 1965-1968 nor the increasing liberalism from 1970-1972 seem to reflect Supreme Court policy propensities. Questions raised by these

TABLE 6(b)

Support for Criminal Defendants - Percentage of Opinions Which are Liberal--By Year



differences should be examined in future studies which focus on more specific case categories, such as right-to-counsel or search and seizure. Focusing on a specific case category would facilitate comparison of federal district court propensities before and after Supreme Court rulings and interference as to the impact of such rulings. For example, right-to-counsel opinions could be compared before and after the Gideon v Wainwright decision.¹²

Class Discrimination

As revealed by Table 6(c), the number of class discrimination opinions more than tripled between 1967-1972. Further this rapid increase in the number of opinions is paralleled by an increase in the percentage of these opinions which are liberal. Knowledge of the year an opinion was issued reduces error in predicting its liberal/conservative nature by eight percent.

With the notable exceptions of 1952 and 1958, the percentage of opinions which are liberal did not fluctuate a great deal between 1944 and 1963. Further, fluctuations between adjacent years tend to be rather small. Nonetheless, there is a tendency for the percentage of opinions which are liberal to be lower during the Warren Court than during the Burger Court.

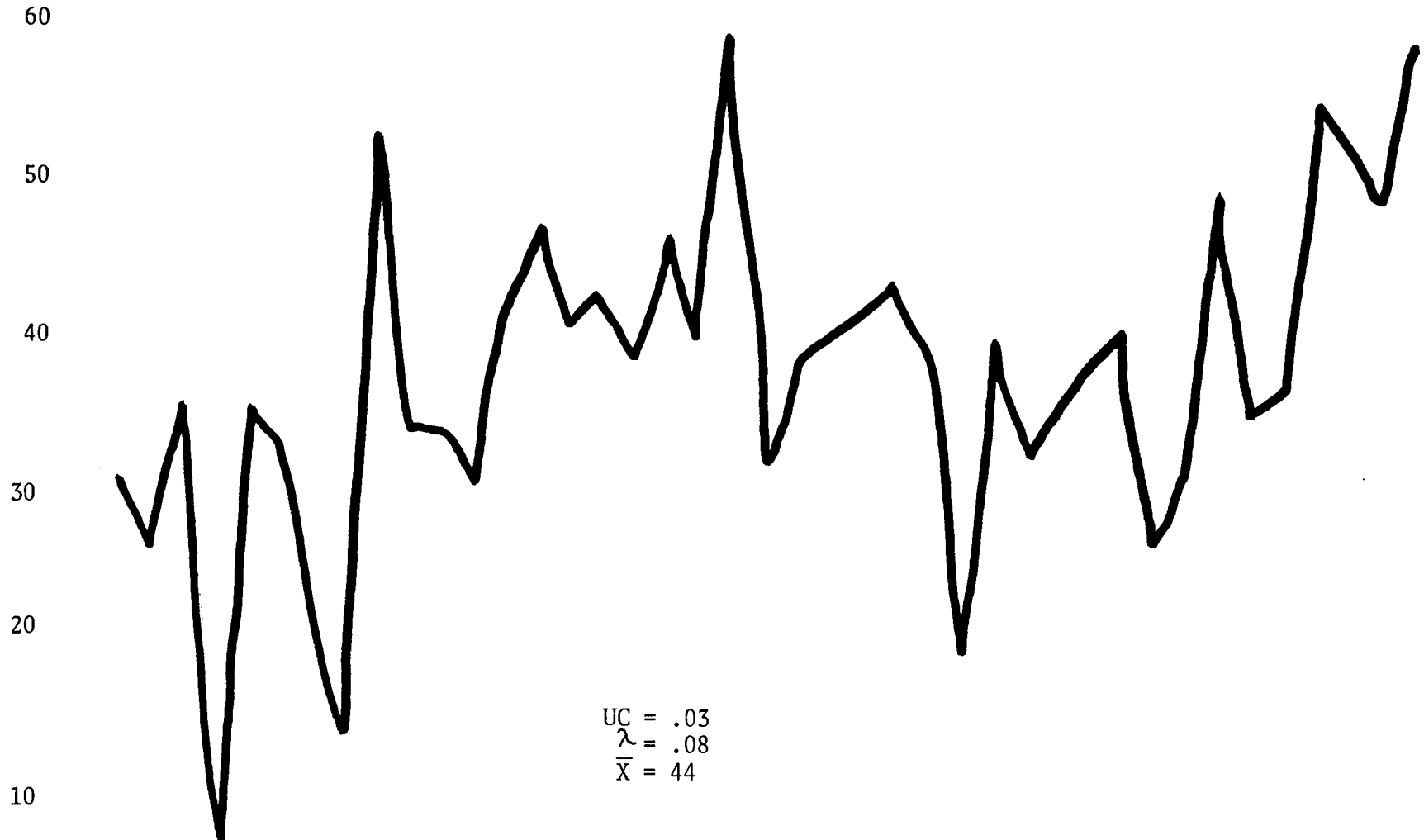
As with all cases this may reflect the dominance of Johnson appointees by the late 1960's and/or a desire by lower court judges to justify decisions which distinguish Supreme Court rulings. However, a third possibility is raised. The increase in liberal class discrimination opinions seems to parallel increased political activity and identifica-

TABLE 6(c)

Class Discrimination- Percentage of Opinions Which are Liberal--By Year

Year: 1932 3 4 5 6 7 8 9 1940 1 2 3 4 5 6 7 8 9 1950 1 2 3 4 5 6 7 8 9 1960 1 2 3 4 5 6 7 8 9 1970 1 2
 N of Opinions: 12 21 16 12 19 20 31 25 11 25 36 50 94 27 29 42 50 54 44 62 23 69 109 112 112 106 34 61 67 65 72 18 76 77 41 122 172 245 344 376 460

Percent
Liberal



tion with the Democratic party by blacks and may reflect statutes such as the Civil Rights Act of 1964 and Supreme Court decisions¹³ which outlawed forms of racial discrimination. The possible link between these events and increased class discrimination liberalism is explored by focusing on the racial exclusion subcategory and tracing differences in racial exclusion opinions over time. These differences are reported in Table 6(d).

As indicated by Table 6(d), the general class discrimination trends in number of opinions and percentage of liberal opinions are quite apparent for racial exclusion cases. In combination, the increased political activity of Blacks, the various new civil rights laws, and the increasing percentage of Kennedy/Johnson appointees appear to have produced an increasing percentage of liberal opinions for class discrimination cases in general and racial exclusion cases in particular. In fact, knowledge of the year an opinion was returned increases accuracy in predicting whether it is liberal or conservative by 17 percent in racial exclusion cases. Future studies should focus on many specific case categories and treat major pieces of legislation as "treatments" and test their effects by measuring trends before and after such legislation and formally testing the significance of any differences.¹⁴ In addition to explicating the relationship between federal courts, such research may contribute to the more general understanding of the role of the federal district courts in implementing federal civil rights policies.¹⁵

Given the popular identification of pro-civil rights and pro-civil liberties propensities with patterns of general liberalism and work by Glendon Schubert which identifies both as components of a general liberal

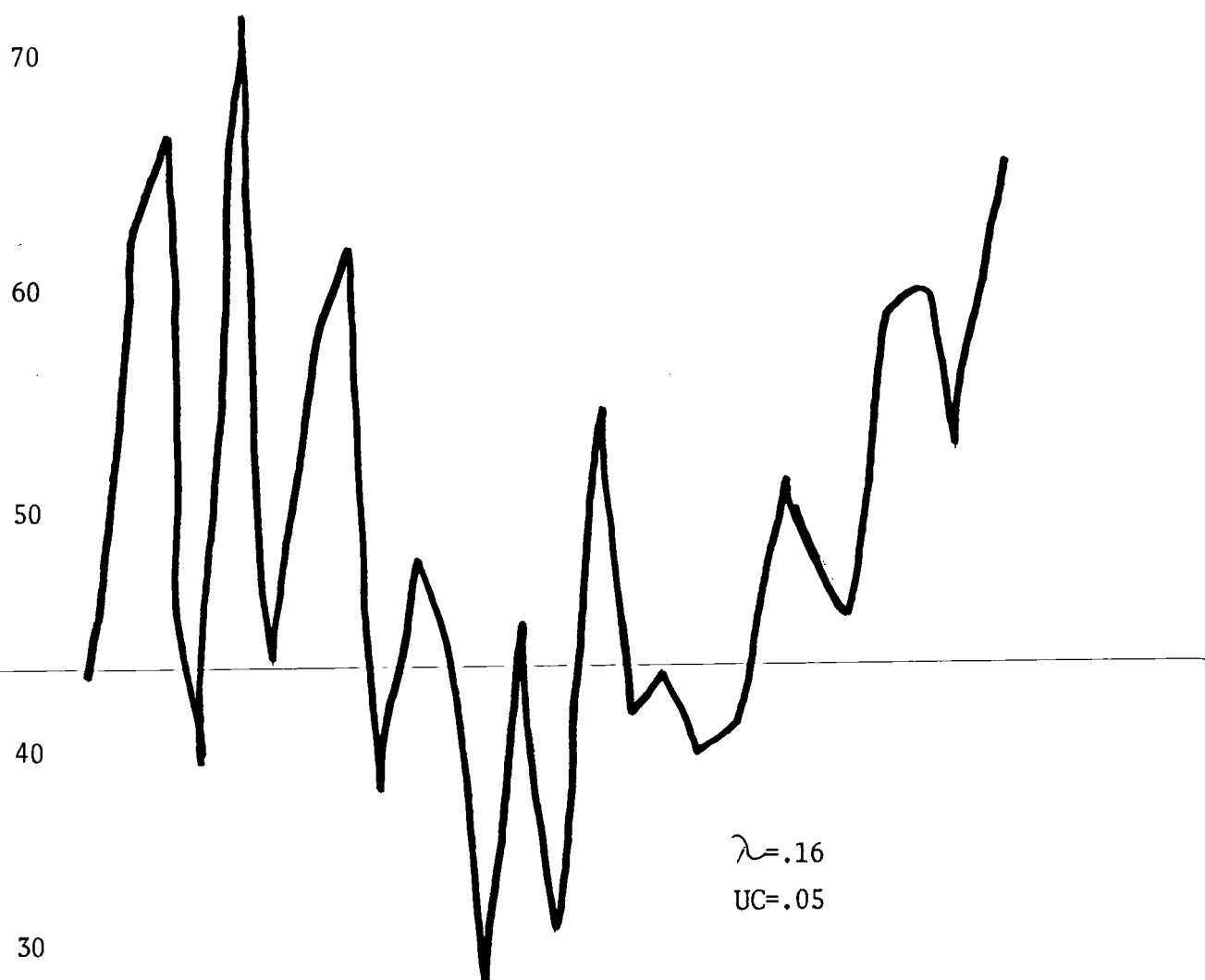
TABLE 6(d)

Among-Year Differences in Liberal Propensity-Racial Exclusion Cases

Year: 47 48 49 50 1 2 3 4 5 6 7 8 9 1960 1 2 3 4 5 6 7 8 9 1970 1 2

N of
Opinions: 7 9 11 8 10 9 5 6 11 12 12 11 15 21 22 36 39 41 37 41 45 55 103 102 115 89

Percent
Liberal



dimension, it will be interesting to note whether patterns of among-year differences are similar for the two categories. Freedom of expression opinions are explored next.

Freedom of Expression

Two primary patterns emerge for freedom of expression opinions. First, their frequency increased dramatically during the Vietnam war years. This was especially true during the years the war was conducted by the Nixon Administration. Second, the percentage of opinions which were liberal also increased dramatically during the Nixon Administration. Overall, knowing the year an expression opinion was issued improves ones chances of predicting whether it is liberal or conservative by 17 percent.

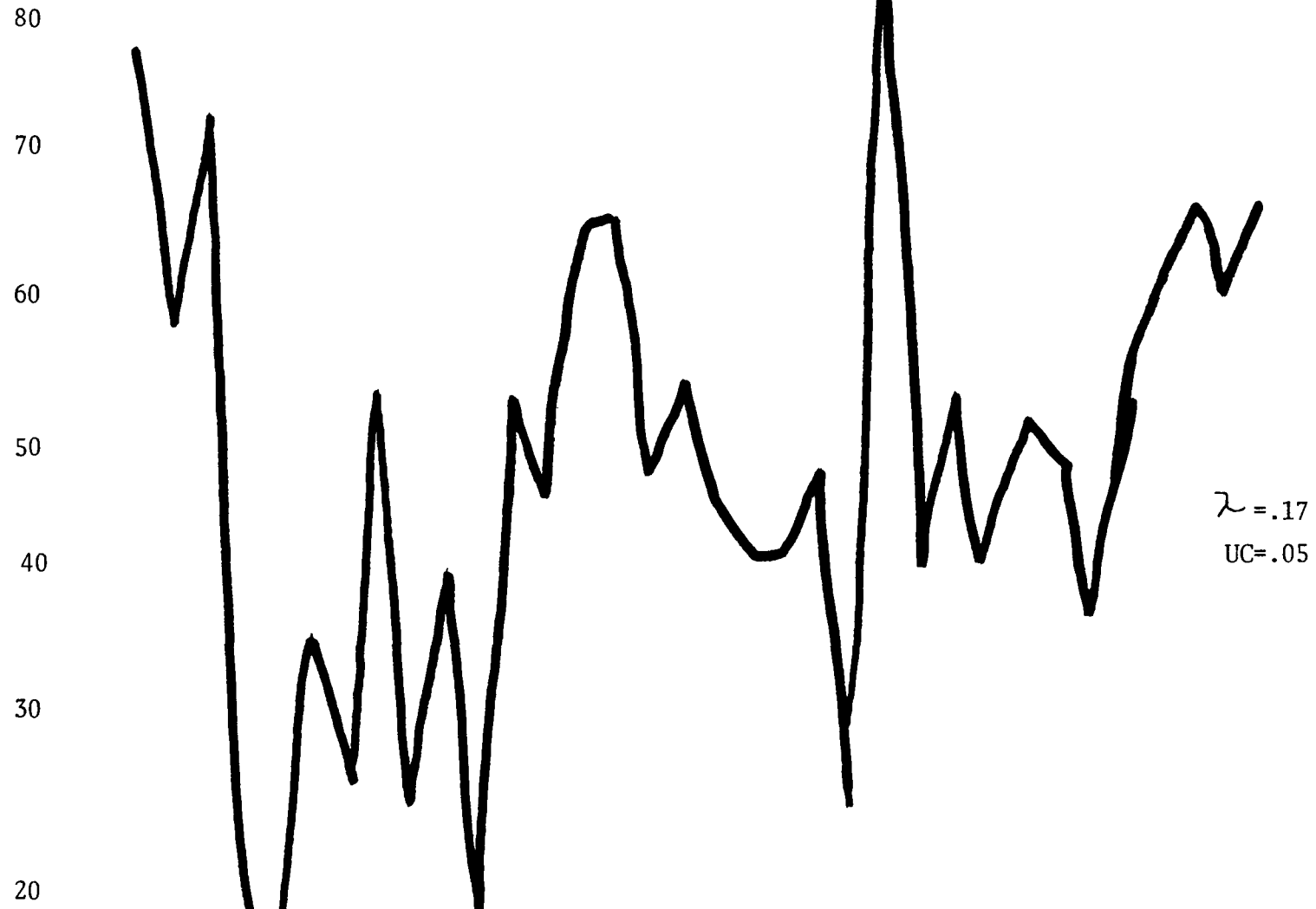
Two secondary patterns also emerge for expression opinions. First, the percentage of opinions which were liberal was quite low during the Second World War, with substantial fluctuation between adjacent years. Second, the pattern after 1951 is similar to the pattern reported for all cases; that is, a gradual conservative trend from 1952-1968 is reversed and replaced by a liberal trend from 1968-1972. Again, the lower courts seem to return a lower percentage of liberal opinions during the tenure of Earl Warren than during the Supreme Court tenure of Warren Burger.

A final, very tentative trend can be identified for expression cases. Dramatic increases in the number of opinions issued seem to occur immediately following increases in the percentage of opinions which are liberal. For example, between 1960-1961, the percentage of

TABLE 6(e)

Among Year Differences in Percentage of Opinions Which Are Liberal-
Freedom of Expression Opinions

<u>Year:</u>	32	3	4	5	6	7	8	9	1940	1	2	3	4	5	6	7	8	9	1950	1	2	3	4	5	6	7	8	9	1960	1	2	3	4	5	6	7	8	9	1970	1	2	
<u>N of</u> <u>Opinions:</u>	1	1	2	1					13	15	12	23	12	25	19	14	20	20	12	10	7	10	15	33	20	23	18	10	11	2	2	23	30	23	31	37	50	93	61	209	187	135



expression opinions which were liberal increased from 25 percent to 75 percent. Predictably, the number of opinions increased almost 300 percent from eight in 1961 to 23 in 1962. Similarly, an increase in liberal opinions from 36 percent in 1966 to 51 percent in 1967 was reflected in an increase in the number of opinions from 50 in 1967 to 93 in 1968. This pattern is hardly overwhelming; however, it seems reasonable that increased liberalism could encourage litigants to file first amendment claims. This possibility could be tested formally in future studies by developing models which predict changes in case load from changes in decision-making patterns. Such models should also focus on more specific case categories than is possible in an exploratory study such as this one. Focus on more specific case categories would also facilitate a search for specific events, such as Supreme Court decisions or legislation, which are associated with shifts in liberal/conservative trends.

In earlier chapters, labor opinions have not reflected liberal propensity patterns consistent with other case categories. In the next section, labor opinions are described across time.

Labor Opinions

As indicated by Table 6(f), neither the frequency of labor opinions nor the percentage of labor opinions which are liberal is consistent with case category patterns reported earlier. Predictive error is reduced by only six percent. Further, the frequency of labor opinions has remained fairly stable since 1952. Finally, since 1952, the percentage of labor opinions which are liberal is lower during Republican

TABLE 6(f)

Among Year Differences in Percentage of Opinions Which are Liberal-Labor Opinions

Percent
Liberal

Year:

1933 4 5 6 7 8 9 1940 1 2 3 4 5 6 7 8 9 1950 1 2 3 4 5 6 7 8 9 1960 1 2 3 4 5 6 7 8 9 1970 1 2

80

N of 6 12 5 5 12 5 15 9 13 4 5 5 12 12 3 7 13 20 37 47 48 58 67 36 32 26 72 62 57 65 77 71 73 71 70 64 57 42 74 86

Opinions:

70

60

50

40

30

20

 $\bar{x} = 44$ $\lambda = .06$
UC = .02

Administrations than during Democratic Administrations. For example, only 40 percent of the labor opinions issued during the Eisenhower Administration were liberal while 56 percent of those issued during the Kennedy/Johnson Administration were liberal. Likewise, the frequency of liberal opinions under the Nixon Administration has been reduced to 46 percent. The reasons for these aggregate party differences are difficult to project; however, more detailed future studies should examine the role of the Labor Board and the Justice Department in bringing cases before the courts. It seems probable that both institutions would display more aggressive pro-labor tendencies under Democratic Administrations.¹⁶

In one regard, the pattern of fluctuations among years in labor liberalism is similar to other case categories. Extreme fluctuations between adjacent years prior to 1951 are replaced by more moderate fluctuations after that time. In sum, however, the among-year differences for labor cases seem atypical. The atypical patterns for labor opinions may reflect the absence of constitutional questions in most labor cases and a related effort by the courts to fulfill legislative intent rather than exercise judicial discretion in reaching labor decisions. This possibility will be explored in part two's description of party differences over time. However, attention is now turned to another economic category to determine whether the labor pattern is maintained or whether local economic regulation opinions resemble the pattern for earlier non-economic case categories.

State and Local Economic Regulation Opinions

Interestingly, the pattern of differences across time for local

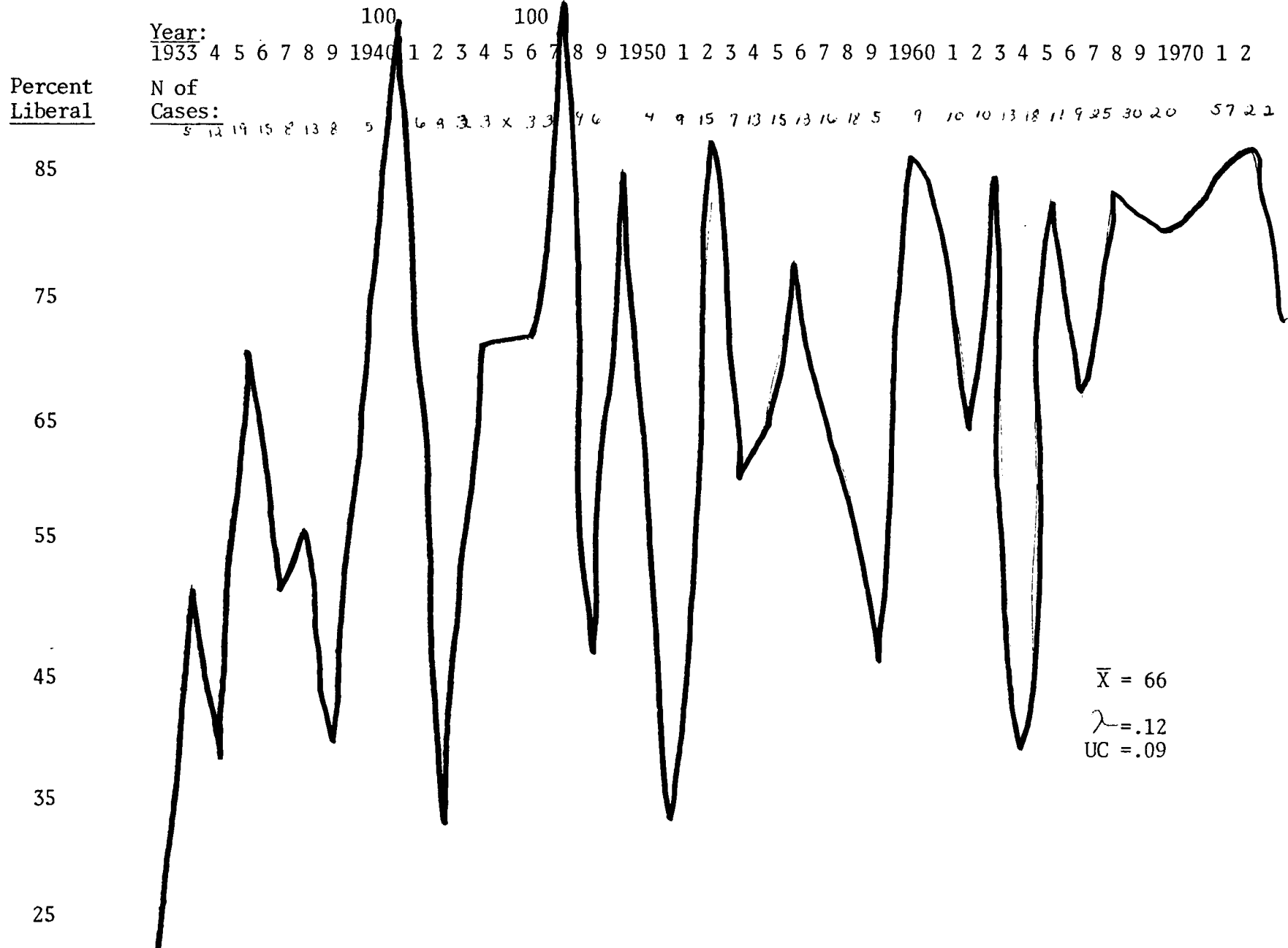
economic regulation cases bares only a slight resemblance to either labor cases or the non-economic categories discussed earlier. Interesting new patterns emerge for differences in both the number of opinions and the frequency of liberal opinions.

As indicated by Table 6(g), the number of local economic regulation opinions has not increased as steadily or as unevenly as have opinions in other case categories partially because this is a rather narrowly defined category. However, substantial shifts in the number of opinions have occurred at certain times. For example, a substantial decrease in the number of local economic regulation opinions occurred in the years following the 1937 "switch in time." In all probability, this reflects a shift in policy propensity on the Supreme Court in favor of economic regulation. Likewise, a gradual increase in opinions from 1967-1971 is followed by a decrease in the number of local economic regulation opinions in 1972. This may reflect the general pattern associated with the desire of Warren Burger to reduce the federal court case load. Examination of specific opinions is more feasible in this category than would be the case for larger categories. Therefore, this possibility should be explored by extending the analysis beyond 1972 and by examining specific opinions.

Among-year differences in the percentage of local economic regulation opinions which are liberal also reveal an interesting pattern. Since 1933 there has been a gradual but uneven increase in the percentage of local economic regulation opinions which are liberal. However, due to the relatively small number of cases, the fluctuations between adjacent years remained fairly large until 1966 when the number

TABLE 6(g)

Among-Year Differences in Percentage of Opinions Which Are Liberal--Local Economic Regulation Opinions



of opinions returned increased. An increase in liberalism from 1934-1941 seems to reflect an increasing acceptance by the courts of economic regulation and increasing number of Roosevelt appointees. However, the increased stability and steady liberalism from 1966-1971 would not seem to reflect the seating of Nixon appointees. Rather, it seems to reflect the tendency suggested by non-economic categories for the liberalism to increase during the tenure of the Burger Court. This pattern will be reviewed by exploring disparities in liberal opinion percentages between parties in part two which follows the summary of part one's findings and suggestions for future research.

Summary Part One

Part one has explored differences by year from 1933-1972 in the number of opinions issued and the percentage of these opinions which were liberal. This exploration has been reported for all cases and for each of five case categories. For all cases, the number of opinions returned has increased steadily from 1933-1971; however, 1972 marked a reduction in the number of opinions issued. This same pattern of a gradual increase which was reversed in 1972 was most prominent for criminal opinions. The pattern of opinion frequency for other types of opinions varied by case category. The number of labor opinions has remained fairly stable, while the number of freedom of expression opinions increased dramatically during the Vietnam years. Class discrimination opinions have increased sharply since 1967, while local economic regulation opinions have remained fairly stable except for a fairly sharp increase from 1967-1971. These general and specific

patterns of increasing frequencies of opinions raise an interesting question about differences between years. The increases seem to reflect increases in the federal district court caseload; however, this relationship should be tested empirically to determine whether other factors, such as changes in Supreme Court policy propensities cause a larger percentage of district court decisions to be codified as formal opinions.

Substantial differences between years have also occurred in the percentage of federal district court opinions which are liberal. For all cases and for all categories except local economic regulation differences between adjacent years have decreased since about 1951, producing visible trends across years in the percentage of opinions which were liberal. For local economic regulation cases, the stabilization of among year differences seems to have occurred more recently and to have coincided with the 1967 increase in the frequency of local economic regulation opinions. For all cases and for each category, the pattern of increasing stability of liberal/conservative differences raises interesting questions. These questions should be the subject of future research which focuses on more specific case categories and seeks to relate these changes in stability patterns to changes in appellate court patterns or to changes in the federal court administrative apparatus which may have stabilized liberal/conservative fluctuations.

As noted, the reduced fluctuation in between-year liberal/conservative differences produced visible trends across years in the percentage of opinions which were liberal. Some of these trends were surprising. With the exception of a slight increase during the Kennedy

years, liberal percentages declined from 1951-1968 for all cases. From 1968-1972, a trend toward increased liberalism was reported for all cases. This same basic pattern was reported for criminal cases, with a gradual shift to increasing liberalism in 1960 increasing rapidly from 1968-1972. In class discrimination and freedom of expression opinions, liberal trend began in 1964 and has increased through 1972. These patterns are particularly intriguing when one remembers that the trend toward increasing liberalism on the district courts has increased during the Nixon Administration and the Supreme Court tenure of Chief Justice Burger. Different patterns were reported for non-economic case categories. The percentage of labor opinions which are liberal seems to shift slightly with the party of the president--i.e., slightly higher percentages of liberal opinions are returned during Democratic Administrations. In local economic regulation cases a gradual but uneven increase in the percentage of opinions which were liberal was reported across the 40 year time span.

Of course, future studies should extend the work reported here from 1972 to the present to determine whether the patterns reported here are maintained. Future studies should also examine the possibility that for non economic case categories, a conservative Supreme Court may produce a general liberal trend in federal district court opinions. Studies of this relationship should be careful to determine whether increases in liberal opinions actually reflect increases in liberal decisions or whether lower court judges feel compelled to accompany liberal decisions with an opinion when under the supervision of a more conservative appellate court.

In specific case categories future studies should focus on narrowly defined categories and seek to discover specific events or "effects" associated with shifts in liberal/conservative trends. Such work will help determine the impact of events such as the Civil Rights Act of 1964 on federal district court policy propensities.

Part Two: The Effects of Party Affiliation Under Controls for Time

The question addressed by part two of this chapter is whether an opinion-writer's party affiliation is a better predictor of liberal opinion during certain time periods than it is during others. In chapter three, party was found to be a very weak predictor of liberal opinions for the entire 40 year period covered by this data set. However, as outlined in chapter one, the saliency of party affiliation in Congress has varied over time and across issues.¹⁷ Thus, it seems reasonable that an opinion writer's party affiliation may be a better predictor of the liberal/conservative nature of an opinion during some time periods than during others.

In studies of Congress, party affiliation tends to be most salient in the wake of realigning elections. One might, therefore, hypothesize that party affiliation would be most salient to federal district court judges in the wake of the 1932 realignment. However, this hypothesis was not tested for three reasons. First, at the end of the Republican Era in 1932, almost all judges were Republican and exceptions to this were found disproportionately in the South. Second, the 1932 realignment did not produce an immediate realignment of personnel on either the district or appellate courts; thus, the structural realignment is

not generalizable from the Congress to the courts. Third, the number of cases for most categories is quite small and, as seen in step one, fluctuations between years in the percentage of opinions which were liberal were often extreme.

While the effects of realignment are not functionally analogous from the Congress to the courts, there may be at least two similar effects on the courts during other periods. First, the post-realignment link between party and policy was strongest around new issues related to the New Deal. Congressional Party cleavages were most prominent in economic issues. Thus, when new economic policy categories appeared, party served as a cue in the absence of institutionalized response patterns or constituency influences which had developed for other policy areas. It seems reasonable that a similar phenomenon may occur on the federal courts, i.e., when statute or appellate court decisions create new policy questions, neither state decisis nor localism can furnish important cues. In such a situation, the judge's party affiliation may serve as an important cue.

Second, the post-alignment link between party and policy also reflected a shift in control of the executive from Republicans to Democrats. Perhaps more importantly, the shift from Hoover to Roosevelt marked an important ideological shift. This ideological shift re-defined many of the questions brought before Congress. In many ways, this shift is analogous to the ideological shift from the Warren to the Burger Courts. A number of Warren policies have been modified and new questions have been raised. The saliency of party may have been enhanced by the identification of the Burger Court with the new

Republican administration and with issues, such as "law and order" identified with the Nixon presidential campaign and the Nixon presidency.

In sum, a shift in the leadership and ideological make up of the Supreme Court may interact with a related increase in new questions before the lower federal courts to increase the saliency of party affiliation for federal district judges. Given the ideological differences between Earl Warren and Warren Burger, and the prominence of court-related issues in the Nixon presidency, the shift from Earl Warren to Warren Burger may effect the saliency of party on the federal bench in a manner analogous to the effect of realignment on the 1932 Congress.

This possibility will be explored by testing the following hypothesis:

Hypothesis 6a: Post-1969 interparty differences in the percentage of opinions which are liberal will be greater than were pre-1969 differences for all cases and for each aggregated case category.

This hypothesis will be tested for all cases and for each subcategory combination defined in step one. Again, Lambda (λ) and Uncertainty Coefficients (UC) will be used to measure the ability of an opinion writer's party affiliation to predict the liberal/conservative nature of the opinion.

More importantly, differences in the frequency of liberal opinions issued by Democrats and by Republicans will be computed for each of the eight years from 1965-1972 to determine whether a trend of increased differences can be identified beginning with the advent of the Nixon presidency and appointment of Warren Burger as Chief Justice in 1969.

Pre and post 1969 party differences are presented for all cases in

Table 6(h).

TABLE 6(h)
Party Differences Across Time in the Percentage of Opinions
Which are Liberal

	<u>% Liberal Pre '69</u>	<u>% Liberal Post-'69</u>	<u>Change in Disparity</u>
Democrats	43	47	
Republicans	<u>41</u>	<u>37</u>	
Disparity	2	10	+8 (500%)
X=	0	0	0
UC=	.0004	.01	+.01

As reflected in Table 6(h), hypothesis 6a is confirmed for all cases. The difference between Democrats and Republicans did increase after Nixon assumed the presidency and appointed Chief Justice Burger. However, the increase is not large. One cannot, therefore, be sure that other more general environmental factors such as an increasing crime rate,¹⁸ are not responsible. Nor can one be sure that the differences hold for each of the four years between 1969 and 1972. Finally, based on Table 6(h), one cannot be sure that the differences reported reflect differences between the years immediately following 1969 and the years immediately preceding it. The wide range of years before 1969 (1933-1968) may reflect differences between earlier periods rather than differences between the last Burger years and the Warren years immediately preceding them. To determine whether the increased party difference is reflected in each of the years from 1969-1972 and to

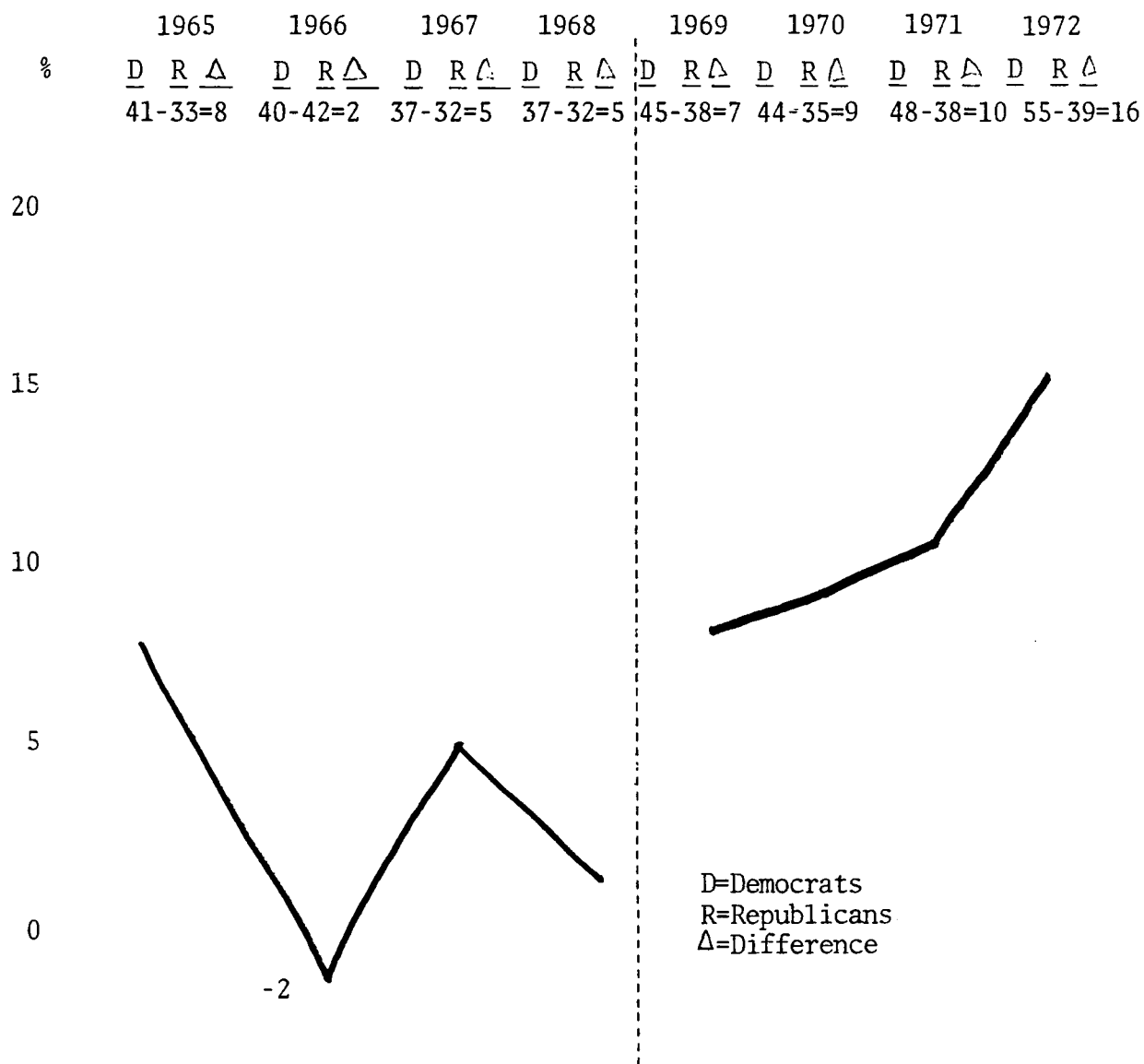
determine whether these post-1969 differences represent a shift from pre-1969 party differences, the differences between parties in the percentage of opinions which are liberal is reported and graphed for each year from 1965-1972 in Table 6(i).

The pre and post-1969 trends in party differences for all cases are dramatically different. Party differences in the percentage opinions which are liberal are most uneven for the four years prior to 1969; in fact, Republican judges returned a higher percentage of liberal opinions than did Democrats in 1966. In 1968, Democrats returned only two percent more liberal opinions than did Republicans. However, in 1969 the difference was seven percent and by 1972 the difference was 16 percent. It is interesting to note that the large differences between 1971 and 1972 coincided with the retirement of Justices Black and Harlan and the appointment of conservative justices Lewis Powell and William Rehnquist.

The differences graphed in Table 6(i) certainly seem to suggest a steadily increasing party saliency generated by the 1969 shift. However, one could argue that the shift occurred sooner--in 1960, for example. One might also argue that extraneous events, such as an increase in the percentage of seated federal judges who had been appointed by Johnson and Nixon, were responsible for the pre and post 1969 party differences. This, of course, would qualify but not contradict the analysis offered here. These and other alternative explanations can and should be tested in future studies by expanding and updating the time frame to include pre 1968 and post 1972 opinions. This expansion will also facilitate application of more sophisticated quantitative trend analysis techniques such as Box-Jenkins,¹⁹ forecasting

TABLE 6(i)

Party Differences by Year in Percentage of Opinions Which
Are Liberal--All Cases



techniques or Mood tests for significant differences in linear trends.²⁰

Similar tests could also be applied to analogous eras; for example, party differences could be compared before and after the 1937 "switch in time." Pending further research, the current evidence suggests that ideological and partisan changes on the Supreme Court and in the executive have produced major changes in the saliency of party affiliation on the federal district courts. The analysis which follows will further explore the "Nixon/Burger effect" and determine whether this pattern is maintained for each of the aggregated case categories.

Support For Criminal Defendants

Given the centrality of questions involving the rights of criminal defendants to the Nixon presidential campaign and to his judicial appointments, one would predict that the Nixon/Burger effect would be especially apparent in criminal cases. Table 6(j) indicates that this is indeed the case.

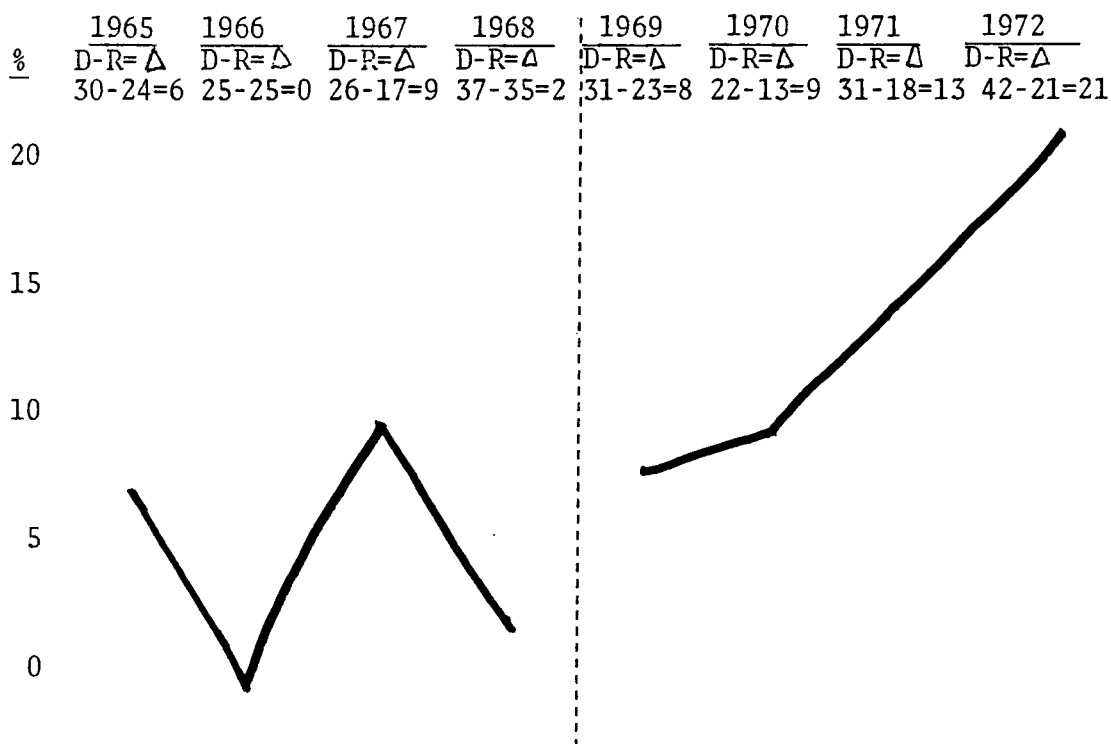
The pattern of differences in criminal cases resembles that for all cases. The pre and post 1969 disparity in the percentage of opinions which were liberal has jumped from five percent to 12 percent for crime opinions, an increase of more than 100 percent. Further, the between year differences increase even more rapidly between 1969-1972 for criminal cases than for all cases. In fact, a difference of two percent in 1968 has increased steadily to 21 percent by 1972. Again, the differences increase more rapidly as more Nixon appointees are seated on the Supreme Court and on the district courts.

As with all cases, future studies should expand the time frame to

TABLE 6(j)

Party Differences Among Years in the Percent of
Opinions Which Are Liberal--Criminal Cases

	<u>% Liberal Pre-1969</u>	<u>% Liberal Post-1969</u>	<u>Change</u>
Democrats (D)	25	30	+5
Republicans (R)	<u>20</u>	<u>18</u>	<u>-2</u>
Disparity (Δ)	5%	12%	+7
λ		0	
UC		.01	



facilitate formal trend analysis and better control for possible extraneous influences. However, at this point, hypothesis 6a is strongly supported for criminal cases.

Class Discrimination

As indicated by Table 6(k) the pattern established for all cases and for criminal opinions is largely maintained for class discrimination opinions. The post-1969 disparity of 13 percent is almost double the pre-1969 disparity of seven percent. As would have been predicted by the analysis in part one, the post-1969 percentage of opinions which are liberal is higher for both parties; however, the sharper increase for Democrats produces an increase in the disparity between parties.

The pattern of differences between parties after 1969 is similar to the pattern for all cases and for criminal cases. However, the sharp increase in disparities begins one year later, in 1970. The increase between 1971 and 1972 is especially sharp.

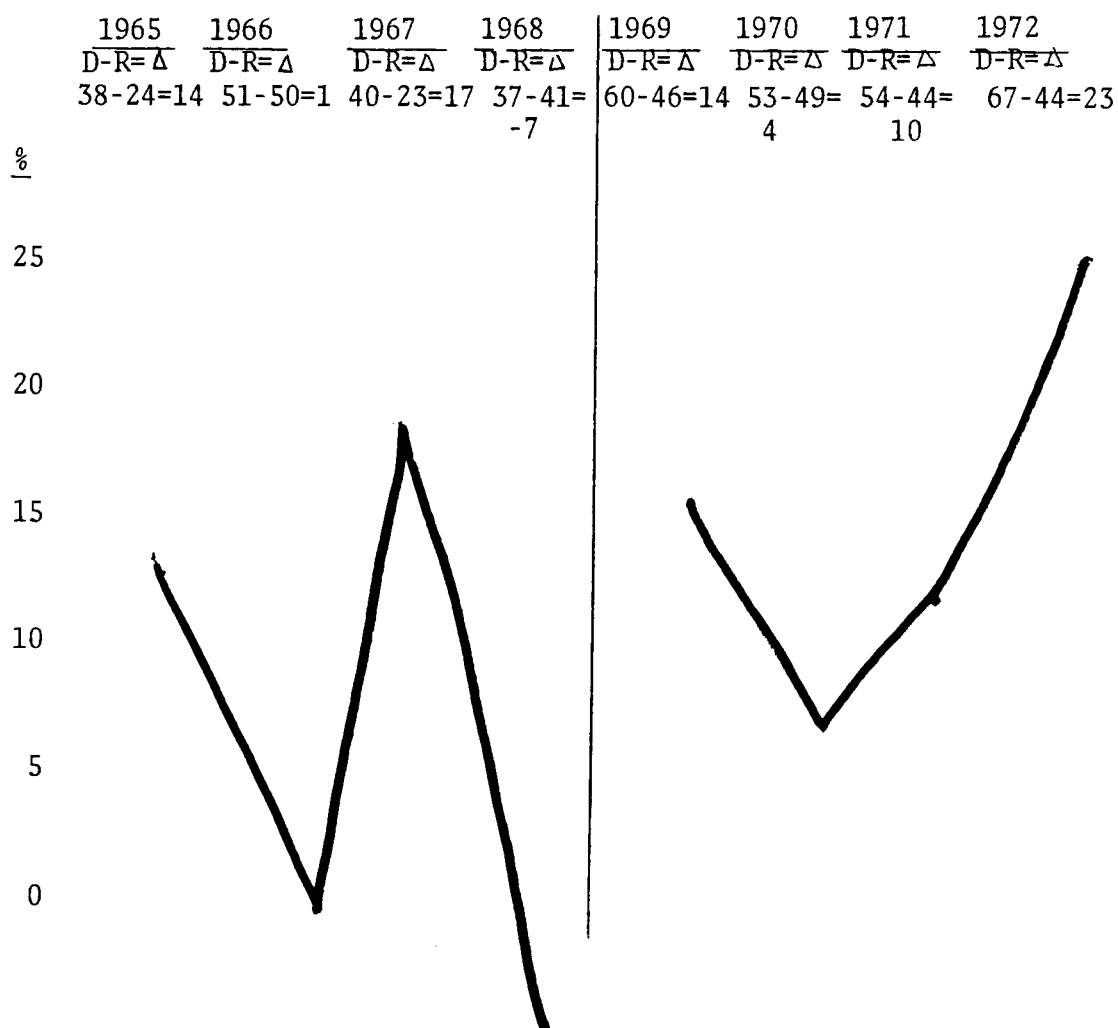
Future studies should expand the exploration of class discrimination trends in two ways. First, the Nixon/Burger transition can be better understood by expanding the time frame and by the application of more sophisticated measurement techniques. Second, specific discrimination categories (race, sex) and types of discrimination (housing, school) should be isolated and examined in detail. The key to understanding the atypical 1969-70 decrease may be in more detailed studies.

In part one of this chapter, patterns of liberal/conservative fluctuation over time for freedom of expression cases were quite similar to those for criminal and class discrimination cases. Attention now turns to differences between parties across time in the percentage

TABLE 6(k)

Party Differences in Percentage of Opinions Which Are
Liberal-Class Discrimination Cases

	<u>% Liberal pre-1969</u>	<u>% Liberal post-1969</u>	<u>Change</u>
Democrats (D)	41	59	+18
Republicans (R)	<u>34</u>	<u>46</u>	<u>+12</u>
Disparity (Δ)	7	13	+ 6 (86 percent)
λ	0	.06	+.06
UC	.003	.01	+.097



of freedom of expression opinions which were liberal.

Freedom of Expression

As would be predicted by part one, the pattern of between party differences for expression opinions bears a close resemblance to that for criminal cases and for class discrimination cases. However, as indicated by Table 6(1), the pre and post-1969 differences are more extreme for expression cases than for the other two categories.

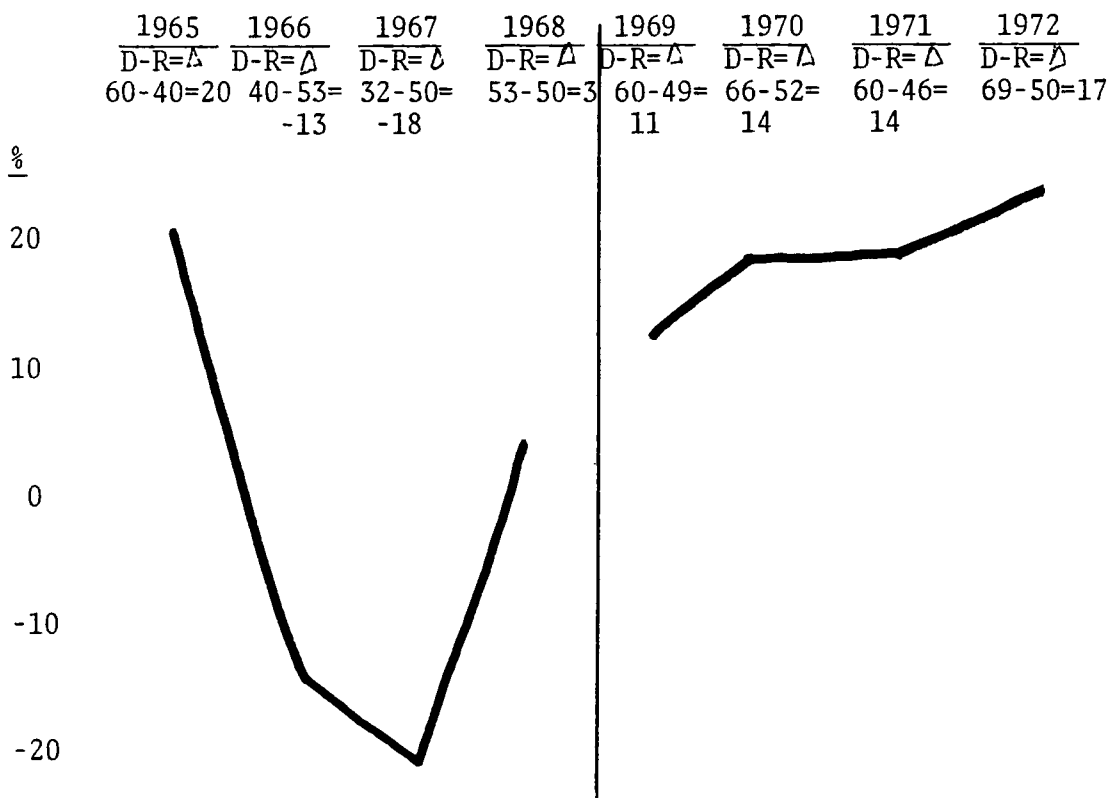
Prior to 1969, Republicans returned a higher percentage of liberal opinions in this category (45) than did Democrats (44). Since 1969, the percentage of Democrats' opinions which are liberal has increased dramatically, while the Republican increase has been slight. The extent to which the Nixon/Burger effect is responsible for this shift is problematic, as indicated by the trend of between year differences.

Party disparities fluctuated wildly before 1969, with Republicans returning a substantially larger percentage of liberal opinions than Democrats for two of these years. The relative stability between years and large inter party disparity after 1969 marks a dramatic reversal. One might argue that the trend of increasing party differences may have began in 1968. It is difficult to say whether the increase from 1967 to 1968 is the beginning of an increasing interparty disparity or whether it is part of the extreme between year fluctuations from 1965-1968. The pre and post-1969 contrast in between-year stability argues that a clear, stable trend of inter-party differences has been introduced by the Nixon/Burger effect. However, as with other case categories, understanding the nature and extent of these trends awaits

TABLE 6(1)

Party Differences in Percentage of Opinions Which Are
Liberal-Freedom of Expression

	<u>% Liberal pre-1969</u>	<u>% Liberal post-1969</u>	<u>Change</u>
Democrats (D)	44	64	-20
Republicans (R)	<u>45</u>	<u>49</u>	<u>+ 4</u>
Disparity (Δ)	-1	15	+16
λ	0	.01	
UC	.0002	.01	-



future studies which expand the time frame and permit more sophisticated analysis.

In part one of this chapter and in earlier chapters, liberal/conservative patterns for the labor category were not consistent with patterns for other case categories. The next step in part two's analysis is a description of liberal/conservative party differences for labor opinions over time.

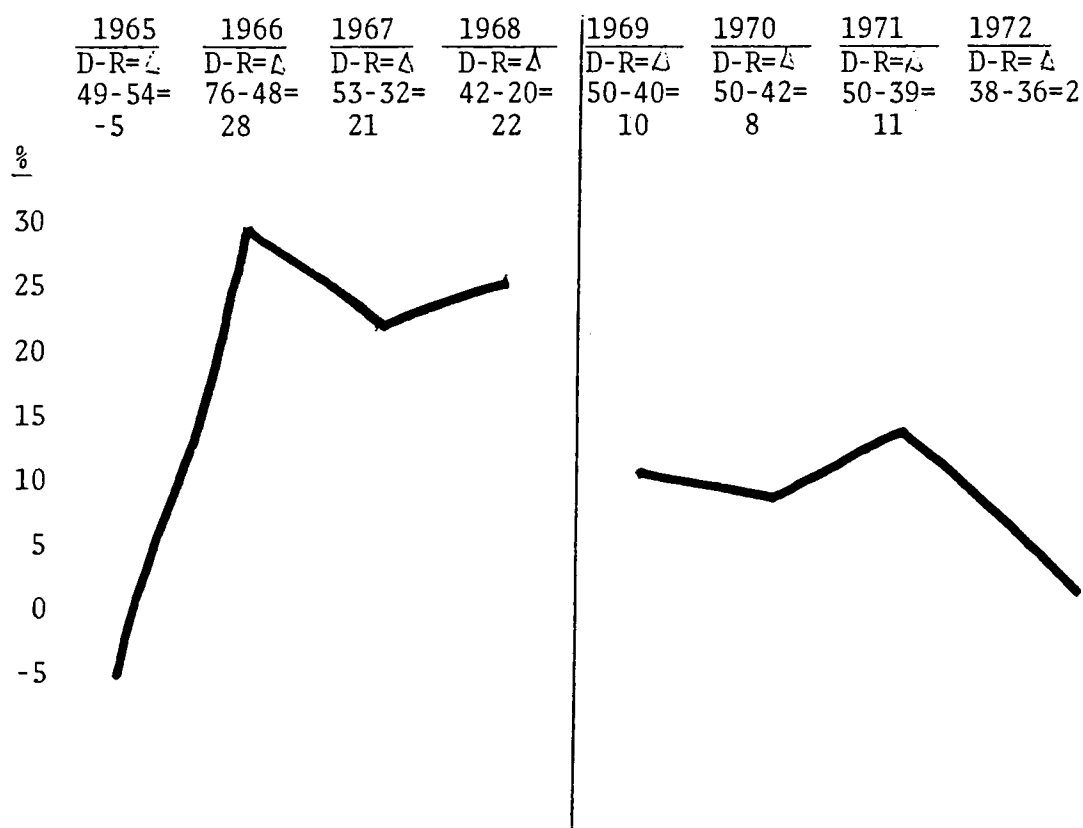
Labor Opinions

Again, patterns established for other case categories are not applicable to labor opinions. As indicated by Table 6(m), the post-1969 disparity is greater than the very slight pre-1969 disparity. However, the increase is small and masks important differences between years before and after 1969. For example, in other case categories, the pre and post 1969 differences were primarily a function of post-1969 increases in the percentage of Democratic opinions which were liberal. However, the difference for labor cases is primarily a function of a decreasing percentage of Republican opinions which are liberal. In fact, the liberal percentage for Democrats remained remarkably consistent from 1967 until 1972, when it dropped substantially. Further, the magnitude of the disparity has dropped substantially since 1969. In fact, the disparity has decreased steadily since 1966 and in 1972, Republicans returned a higher percentage of liberal labor opinions than did Democrats. Thus, the general pre and post 1969 differences obscure a more recent trend in which disparities are declining rapidly. The Nixon/Burger effect for other case categories is almost exactly reversed for labor

TABLE 6(m)

Party Differences in Percentage of Opinions Which
Are Liberal-Labor Opinions

	<u>% Liberal Pre-1969</u>	<u>% Liberal Post-1969</u>	<u>Difference</u>
Democrats (D)	46	47	+1
Republicans (R)	<u>43</u>	<u>38</u>	<u>-5</u>
Disparity (Δ)	3	9	6
λ	0	0	
UC	.0001	.01	



cases. In fact, the trend for labor cases since 1969 is almost a mirror image of the trend for criminal cases.

The obvious question raised is, why is the Nixon/Burger effect associated with declining inter party disparities for labor opinions when it is so clearly associated with increasing disparities in non-economic categories? This question can be addressed more fruitfully by future studies which expand the time frame to determine more accurately whether the pattern is maintained and to determine more precisely whether a significant shift occurs in 1969. However, several possible explanations are raised by the exploratory research reported here.

First, while the federal courts have long recognized the power of Congress and state legislatures to regulate commerce²¹ and establishing labor standards,²² the courts have generally maintained greater judicial discretion in cases involving bill-of-rights questions.²³ Thus, perhaps inter-party cleavage at the district court level is more prominent in those policy domains characterized by judicial discretion. This possibility is supported by the weak link between party affiliation and labor liberalism reported in earlier chapters. However, differences in issue saliency do not explain the large disparities for 1966, 1967, and 1968. Further, this explanation contradicts other studies which found party affiliation more salient for economic case categories than for non-economic case categories.²⁴ Finally, the possibility that non economic issues are equated with judicial discretion and therefore reflect inter-party judicial cleavages more clearly than do non-economic issues does nothing to explain the shift in disparity trends which seems to have coincided with the Nixon/Burger effect in 1969.

A second, more plausible, explanation may be that issues which define party cleavages on the courts vary over time and coincide with the issues defining party cleavages at the macro or presidential level. Questions of strict construction and law and order were raised consistently by President Nixon in a partisan context. These same concerns have been reflected in Burger Court decisions.²⁶ On the other hand, labor issues, while long identified with party cleavages at the macro level, were prominent in neither Nixon policy positions nor Burger Court decisions between 1969-1972. Thus, the data here suggest that cleavages on the courts reflect cleavages at other levels and that such cleavages shift over time.

If the second explanation offered is correct, the disparities between parties across time for local regulation cases should not fit the pattern established for non-economic cases. This possibility is explored next.

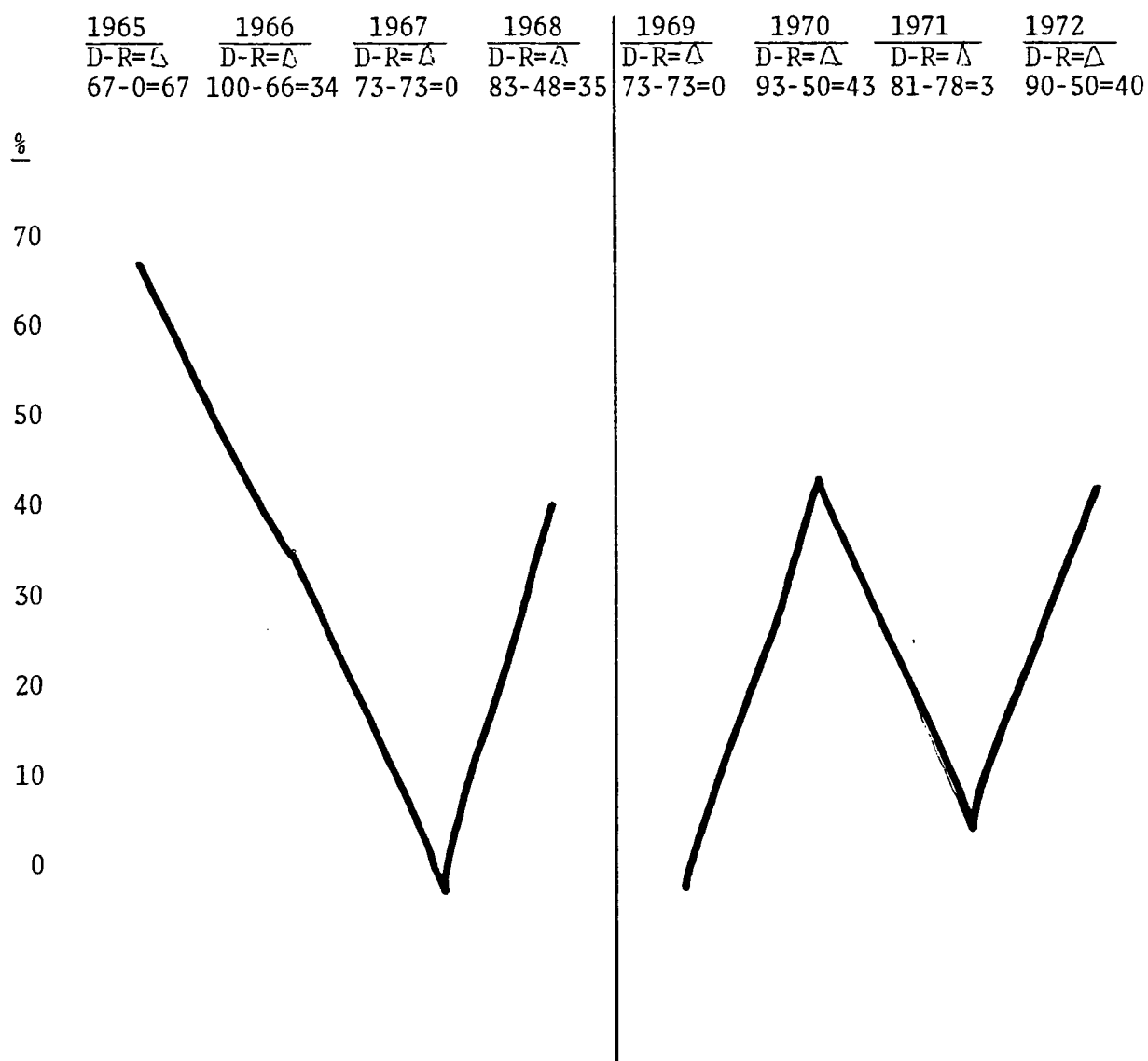
Local Economic Regulation

As indicated by Table 6(n), the disparity pattern for local economic regulation cases resembles neither non-economic regulation cases nor labor cases. The post-1969 percentage of local economic regulation cases which are liberal is substantially larger for both parties than the pre-1969 percentage. This is consistent with the gradual, uneven increase from 1933-1972 in the percentage of local regulation opinions which were liberal. (See Part One.) However, the pre and post-1969 party disparities have remained virtually constant, with an increase of only three percent since 1969.

TABLE 6(m)

Party Differences in Percentage of Opinions Which
Are Liberal--Local Economic Regulation Opinions

	<u>% Liberal Pre-1969</u>	<u>% Liberal Post-1969</u>	<u>Difference</u>
Democrats (D)	67	83	+16
Republicans (R)	<u>55</u>	<u>68</u>	<u>-13</u>
Disparity (Δ)	12	15	+ 3
λ	0	0	0
UC	.01	.03	+.02



The uneven nature of the gradual change in the percentage of opinions which are liberal is reflected in extreme fluctuations between adjacent years since 1969. Neither an increasing nor a decreasing trend in between party disparities is evident for this case category. The magnitude of between year shifts may be at least partially a function of the relatively small number of opinions involved; however, the pattern of fluctuations has continued as the number of opinions has increased during the post 1969 era. Interestingly, as with labor, the between-year fluctuations appear to be primarily a function of fluctuations in the percentage of Republican opinions which are liberal. For example, Democrats have remained between 81-93 percent while Republicans have fluctuated from a high of 78 percent to a low of 50 percent. For Democrats, this would seem to suggest a fairly clear cut policy propensity in local economic regulation cases which favors such regulation. Republicans, on the other hand, seem less supportive and more ambivalent in local economic regulation cases. This ambivalence may reflect conflict between Republican values which oppose economic regulation but prefer state and local intervention to federal intervention in economic questions.

This possibility should be examined more closely in future studies. First, the disparity pattern should be traced for the years following Roosevelt's election and the "switch-in-time" changes on the Supreme Court. Given the identification of the Democratic Party with economic regulation since the New Deal era, one would expect to find the beginnings of Democratic liberalism and Republican ambivalence during

this time. Second, other regulation case sub-categories which do not combine questions of local control and economic regulation should be examined to determine whether shifts occur in the pattern of Republican ambivalence. Finally, as with all case categories, analysis should be extended to the present to determine which patterns of between-party disparity change as the Burger Courts' tenure increases.

In lieu of more detailed studies in the future, the current data suggest that patterns of inter-party disparities in the percentage of local economic regulation cases which are liberal were not changed by the Nixon/Burger effect. This distinguishes such cases from both criminal, class discrimination and freedom of expression cases and from labor cases. Further, disparities in local economic regulation liberalism fluctuate between adjacent years, even after 1969. This overall fluctuation is primarily the result of fluctuation between years by Republicans, which may reflect Republican ambivalence where issues of local control and economic regulation are combined in the same category. Other findings of part two and suggestions for future research will be summarized before turning to the more general summary and suggestions for future research presented in chapter seven.

Summary of Part Two

In part one of this chapter, substantial variance among years in the percentage of liberal opinions returned was reported. In the introduction to part two, the possibility that partisan differences in the percentage of liberal opinions returned might also vary across time was suggested. An analogy was drawn between the effects of the 1932

realigning elections on the saliency of party affiliation in Congress and the possible effect of the 1969 shifts in presidential and Supreme Court leadership on the saliency of party affiliation on the federal district courts. Specifically, it was hypothesized that the disparity between Democrats and Republicans in the percentage of opinions which were liberal would be greater after 1969 than before 1969. This hypothesis was confirmed for all cases and for each case category.

Specific differences in interparty liberal disparities were graphed and reported for each year between 1965-1972. These data suggest additional support for the possibility that a shift in party saliency occurred on the federal district courts in 1969. For all cases and for the criminal, class discrimination and freedom of expression cases, 1969 marked a clear shift between relatively small and unstable differences between parties to clear cut trends of increasing differences. These shifts seem to suggest a Nixon/Burger effect on the magnitude of party differences in the percentage of liberal opinions. This suggestion was supported by the sharp 1971-1972 increase in party disparities which coincided with the appointment of Justices Powell, Blackman, and Renquist and the consolidation of what has come to be known as the Burger Court.

The pattern of increasing inter-party differences reported for non-economic cases did not hold for the two economic case categories. In fact, the pattern was almost exactly reversed for labor cases, with disparities declining steadily since 1969. Local economic regulation disparities continue to fluctuate among years, with no discernible trend for party differences.

The tentative findings reported in part two raise some important

possibilities concerning the effects of the relationship between levels of the federal courts and party effects on the policy statements issued by the lower federal courts. These possibilities should be examined in future studies. The patterns of between year differences must be expanded prior to 1965 and since 1972. Where possible, more specific case categories should be examined. Further, other eras, such as the emergence of the Roosevelt Court should be examined for similar effects. In all expansions, larger time frames will facilitate the application of sophisticated time series and trend analysis techniques to measure the significance of trends and change over time. Finally, if the patterns identified here are replicated in future efforts, work should begin to formulate a model of the effects of time on the saliency of party on the lower federal courts.

NOTES

¹See chapter four, pp. for a detailed outline and justification of these categories.

²A good review of the somewhat confusing, clear and present danger doctrine. J. Linde, "Clear and Present Danger Reexamined," Stanford Law Review, Vol. 22 (1970) pp. 1163-79.

³Such shifts are exemplified by the 1937 Supreme Court "switch in time." See Glendon Schubert, Judicial Policy-Making (Glenview, Ill.: Scott, Foresman Co., 1965), p. 1358. More recently, the shift from the Warren Court to the Burger Court has been characterized as a clear shift in both personnel and ideology. See Justice Potter Stewart's dissent in Mitchell v. W.T. Grant Co. (99 S. Ct. 1895 (1974) p. 1914.

⁴See Henry J. Abraham, The Judicial Process (New York: Oxford University Press, 1975), p. 159. More generally, see Annual Reports of the U.S. District Courts, published annually by the Administrative Office of the U.S. Courts, Wash. D.C.

⁵This effort has included public appeals and publication of federal court workload problems through the popular media. See for example, "New Ways to Speed Up Justice: Interview With Chief Justice Warren E. Burger," U.S. News and World Report, August 21, 1972, pp. 38-46.

⁶For example, the Burger Court requirements re standing are more difficult to meet. See Worth v Seldin 422 US 490, (1975).

⁷A series of studies concerning efficient case disposition have been conducted by the Federal Judicial Center. For example, see "Developments in Judicial Administration: A Five-Year Summary" mimeo prepared by Federal Judicial Center, Washington, D.C. (August, 1974).

⁸Several studies have compared the number of opinions issued and the caseloads of selected districts. See an excellent work by David Neubauer, "Case Management in Three Federal District Courts: An Organizational Perspective," prepared for Conference on the Application of Organization Theory to Trial Courts, Palo Alto, Calif., Aug. 1975).

⁹The possibility that decision-making on the federal courts has become increasingly bureaucratized has been raised by Carl Baar, "The Growth of Federal Judicial Administrative Structures: Implications for Judicial Behavior," paper presented to the 1970 Annual Meeting of the Midwest Political Science Association, May, 1970.

¹⁰See Abraham, Judicial Process, op.,cit.

¹¹Important rulings on the rights of criminal defendants during this time period included Gideon v Wainwright, 372 US 335 (1963): Escobedo v Illinois 378 US 478 (1964).

¹²Gideon v Wainwright, supra.

¹³See Katzenback v McClung 379 US 294 (1964)

¹⁴See, for example, Donald T. Campbell and Julian C. Stanley, Experimental and Quasi-Experimental Designs for Research (Chicago: Rand McNally & Co, 1963).

¹⁵Important study of civil rights policies and their consequences have been conducted by Charles S. Bullock III and Harrell Rodgers, Jr. Law and Social Change (New York: McGraw-Hill, 1972); more recently, see Coercion to Compliance (Lexington, Mass., Lexington Books, 1976) by the same authors.

¹⁶For a study of the success of governmental litigants before the Supreme Court, see Martin Shapiro, The Supreme Court and Administrative Agencies (New York: Free Press, 1968).

¹⁷See David Brady, "Inter-Party Competition and Voting in A Competitive Era," American Political Science Review, March, 1973.

¹⁸Ibid.

¹⁹Blame for the increasing crime rate was placed on the "soft" courts during the Nixon campaign.

²⁰See C. Chatfield, The Analysis of Time Series: Theory and Practice (New York: John Wiley and Son, 1975) for an excellent review of this and other time series techniques.

²¹See A.F. Mood, Introduction to the Theory of Statistics (New York: McGraw-Hill, 1950).

²²For a discussion of the distinction between macro and micro policies and the identification of presidential interest with macro policy questions, see

²³The classic statement was Gibbons v Ogden 22 US 1 (1824). The post 1937 standard was established in NLRB v Jones and Laughlin Steel Corp 301 U.S. 1, (1937).

²⁴See Lincoln Federal Labor Union v Northwestern Iron and Metal Co. 335 US 525 (1949).

²⁵See for example Eugene Rostow, "The Democratic Character of Judicial Review," Harvard Law Review, Vol. 66 (1963), pp. 193-209.

²⁶See Stuart Nagel, "Political Party Affiliation and Judges' Decisions," American Political Science Review, Vol. 55, 1961, pp. 843-5; Sheldon Goldman, "Voting Behavior on the United States Courts of Appeals Revisited," American Political Science Review, Vol. 69, 1975, pp. 491-506.

CHAPTER SEVEN

Summary, Conclusions, and Suggestions for Future Research

Introduction

As an exploratory study, this dissertation has touched many facets of judicial policy-making. In many ways, each chapter stood alone, exploring a different question. This exploration has successfully generated a multitude of tentative findings and questions for future research. However, by definition, the exploratory approach furnishes neither the forum for a synthesis of the somewhat eclectic findings nor the opportunity to place these findings in the context of other research in political science in general or judicial behavior in particular.

Chapter Seven is designed to compensate for these shortcomings. As such, it is divided into three parts. Part one briefly summarizes the substantive findings concerning the policy propensities of federal district judges. Part two seeks to incorporate the substance of this research into the larger context of political science in general and judicial behavior in particular. This incorporation includes conclusions based on a synthesis of the findings reported in part one and a discussion of the implications of these findings for the interpretation of extant work and for the conduct of future research. Part three will build on part two by synthesizing the methodological implications of this dissertation and suggesting a heuristic model for the future.

Part One--Summary

The primary purpose of this dissertation has been to explore the effects of individual judge characteristics, regional differences, and

temporal differences on the liberal/conservative nature of federal district court policy statements issued between 1933-72. Each of the 21,142 district court opinions were placed in one of five categories and one of 21 subcategories based on criteria outlined in chapter two. Each opinion was defined as liberal or conservative based on criteria outlined in chapter two.

For simplicity, this summary will be organized on a chapter-by-chapter basis; however, comparisons will be drawn among the findings of the various chapters. Also in the interest of simplicity, this summary will not include purely descriptive material, such as the number of Truman appointees. Rather, the focus will be on variables which effect the liberal/conservative nature of judicial opinions.

Chapter Three Summary

The primary question addressed by Chapter three was whether an association exists between selected characteristics of an opinion-writer and the liberal or conservative nature of the opinion. Three characteristics were studied: 1) political party affiliation, 2) appointing president; 3) years tenure as a federal district judge.

Chapter three resembled earlier studies in that it used opinions as the unit of analysis and focused on a temporal cross section, with no controls for jurisdiction. As predicted from earlier studies,¹ Democrats returned a higher percentage of liberal opinions than did Republicans for all cases and for each case category. However, the differences were small and did not hold for all case categories and subcategories. Specifically, a larger percentage of Republican opinions

were liberal in voting cases and in union v. worker cases.

Appointing president proved to be a stronger predictor of the liberal/conservative nature of an opinion. Substantial differences in liberal propensity occurred among the appointees of presidents from the same party. Differences between Nixon and Johnson appointees were especially large. Surprisingly, Kennedy appointees returned approximately the same percentage of liberal opinions as did Nixon appointees. Further, the relatively low percentage of liberal opinions by Democrats in voting cases was explained largely by the low percentage of liberal opinions issued by Kennedy appointees; for example, only 28 percent of Kennedy appointee voting opinions were liberal while 52 percent of Eisenhower appointee opinions were liberal. Roosevelt appointees returned a high percentage of conservative labor opinions. These findings raised the possibility that analysis based on the opinion could be misleading if, for example, a small number of conservative Kennedy appointees returned an inordinate number of opinions.

Among-president differences also raised the possibility that these differences reflected temporal differences rather than a policy linkage between the judge and appointing president. Indeed, for all cases and for non economic cases, the length of judicial tenure was associated with increasing liberalism during the first five years on the bench. Then, the pattern was reversed and tenure was associated with increasing conservatism during the second five years tenure. After ten years, no relationship was apparent.

However, this relationship between length of tenure and liberal propensity may be spurious. Specifically, all Nixon opinion writers in

this population have short tenure; Nixon appointees displayed clear conservative tendencies; therefore, the conservatism associated with short tenure may be a reflection of appointing president rather than of bench experience.

In sum, chapter three confirmed earlier studies which found Democratic judges slightly more liberal. However, the findings in chapter three suggest that other background characteristics, such as appointing president and judicial tenure may be more important than party affiliation as predictors of judicial policy outputs. Perhaps most importantly, chapter three indicated that even under controls for case category, no attribute studied was of compelling importance in the absence of controls for space and time. In fact, the best predictor of a liberal or conservative opinion was the case category itself. For example, while only 25 percent of the criminal opinions were liberal, fully 63 percent of economic regulation opinions were liberal. This difference between categories was substantially greater than any within-category differences among opinions. Finally, chapter three's findings raised serious questions about the propriety of generalizing from opinions to judges or even to opinion writers. Chapter four explored these questions by focusing on the opinion-writer rather than the opinion as the unit of analysis.

Chapter Four Summary

Chapter four began by aggregating opinions by opinion writer for all cases and for five aggregated case categories. After defining liberal propensity as the percentage of a judge's opinions which were liberal,

the chapter addressed two related questions:

(1) What is the association between opinion-writer background characteristics and variance in opinion writer liberal propensity?

(2) To what extent can findings based on the opinion as the unit of analysis (chapter three) be replicated by using the same data but focusing on the opinion-writer as the unit of analysis?

As hypothesized, Democrats proved to be more liberal than their Republican counterparts. Specifically, the Democratic mean liberal propensity score was higher than the Republican mean for all cases and for each case category. However, most differences were rather small and accompanied by comparatively large standard deviations, indicating extensive within-party variance. In general, liberal propensity scores were similar to the liberal percentages reported in chapter three.

While the association was not strong, appointing president again proved to be more strongly associated with dispositional propensity than was party affiliation. Differences in liberal propensity between the appointees of Presidents Johnson and Nixon were especially apparent.

Differences based on appointing president are larger for certain case categories than for others. Differences were largest for free expression cases. Except for Roosevelt, differences tended to be rather small for labor cases; however, among-president differences were substantial for the other economic category--local economic regulation. Likewise, among-president differences were small for criminal cases while they were much larger for class discrimination cases.

Analysis by appointing president also illuminated important differences between analysis based opinions and analysis based on the

opinion writer. First, due partially to the short tenure of most Nixon appointees, the Democratic percentage of opinions is substantially higher (62 percent) than the Democratic percentage of opinion writers (55 percent). Second, while the link between party and opinion-writer substantially replicates the links between party and opinion outlined in chapter three, the results were not replicated for appointing president. For example, while only 39 percent of the opinions returned by Kennedy appointees were liberal, the mean liberal propensity of Kennedy appointees was 46 percent. Thus, a small but prolific group of conservatives distorted the relationship between Kennedy appointment and liberalism. Further, large differences reported in chapter three between presidents of the same party disappear when mean liberal propensities are compared in chapter four.

In sum, chapter four found both Democratic party affiliation and appointing president to be weak but consistent predictors of a judge's liberal propensity. For large aggregates such as parties, differences between liberal percentage of opinions and mean liberal propensity tend to be fairly small. However, for smaller aggregates such as appointing president these differences can be quite large and attempts to generalize from opinions to opinion writer policy propensities may be quite misleading.

Chapter Five Summary

Earlier studies were criticized for not systematically studying spatial differences and the possible interaction between space effects and background variables such as party affiliation. Yet chapters three

and four did not control for region or jurisdiction. Chapter five, therefore, addressed the following two questions:

- 1) What are the differences in mean liberal propensity among circuits and among states for all cases and for each aggregated case category?
- 2) What are the differences in liberal propensity between Democratic and Republican opinion writers under controls for circuit?

Variance was reported among circuits and among states. Differences among circuits were generally small; however, statistically significant ($p < .05$) variance was reported for class discrimination cases and for freedom of expression cases. Interestingly, mean liberal propensity in class discrimination cases was higher for the Fifth Circuit than for other circuits. Further, comparatively high liberal propensity scores were reported by all states within the circuit, indicating high propensity homogeneity within the circuit.

Differences among states were not statistically significant for all cases; however, significant ($p < .05$) differences did occur for class discrimination and freedom of expression cases. Further, substantial variance occurred among states within the same circuits. Thus, as would be predicted by Vines' work,² locale seems to be an important determinant of liberal propensity in expression and class discrimination cases.

The second question addressed by this chapter asked whether party differences varied by circuit. The findings reported in chapter five indicate that they do. Between-party differences in mean liberal propensity were especially large in the First, Sixth, and Tenth Circuits.

Again, within-circuit party differences tended to be especially large for labor cases and for cases involving state or local regulation of the economy. Given the data available here, it is difficult to say whether these within circuit differences reflect actual party differences or whether they mask differences among the states within each circuit; however, examples from specific populous states suggested that what appear to be within circuit party differences may actually reflect differences among states.

Substantively, important regional differences were found between Northeastern Republicans and other Republicans in freedom of expression cases. Specifically, Eastern Republicans were much more liberal than were Southern and Western Republicans. Thus, a public split within the Republican party is reflected in the liberal propensity of Republican federal district judges.

Chapter Six Summary

Chapter six added tests for temporal effects on the liberal/conservative nature of judicial opinions to the spatial effects tested in chapter five. The percentage of each year's opinions which were liberal was reported and the following questions were addressed:

- 1) To what extent has the number of opinions and the percentage of opinions which are liberal fluctuated across time (years);
- 2) Do differences between Democrats and Republicans in the percentage of liberal opinions returned vary across time (years)?

Substantial differences in the percentage of opinions which are liberal has also occurred across time. For all cases, a growing con-

servative trend from 1951-1968 was reversed between 1968-69, with an increasing percentage of liberal opinions from 1969-72. With some variation, this same general pattern applies to criminal cases, class discrimination cases, and freedom of expression cases. In labor cases, the percentage of liberal opinions seems to depend on the party which controls the White House--i.e., it is slightly higher during Democratic administrations than during Republican administrations. Liberalism in state and local economic regulation has increased at a very uneven rate since 1933.

The most interesting finding reported in this dissertation was the changing effect of party affiliation on opinion propensity across time. Specifically, for all cases, a clear trend of increasing differences among Democrats and Republicans has occurred since the inauguration of Richard Nixon and appointment of Warren Burger in 1969. This trend has accelerated since the appointment of Justices Blackmun and Rehnquist in 1971.

The pattern of increased differences is reflected in criminal rights cases, class discrimination cases and freedom of expression cases. It is not, however, reflected in state and local regulation cases. More importantly, an opposite trend is apparent for labor cases--i.e., the liberal conservative differences between Democrats and Republicans have declined since 1969 for labor opinions.

It is not clear from this study whether temporal differences reflect the slow but protean shifts inherent in common law systems or whether they reflect changes in larger environmental influences. Nonetheless, one may conclude that liberal/conservative propensities shift

over time and that explanations of judicial policy propensities should include temporal considerations. The importance of temporal considerations is among the conclusions drawn in part two below.

Part Two--Substantive Conclusions and Suggestions For Future Research

Part two will offer tentative conclusions about judicial policy propensities based on a synthesis of the findings summarized in part one. These conclusions will be related to extant work in both political science and public law and will serve as the basis for suggested future research.

Part two is organized in the following sequence:

1. General conclusions from cross-sectional findings;
2. Conclusions from space-related findings;
3. Conclusions from time-related findings.

General Conclusions

The disparate findings of this dissertation justify several substantive conclusions. The least welcome but most obvious conclusion is that cross section studies of the relationship between federal district judge's backgrounds and their liberal/conservative policy propensities don't tell one much about judicial policy-making. A broad cross section observes temporal differences, while research based on narrow cross sections cannot be generalized across time.

Perhaps this point can be made by visualizing a single federal district judge and viewing that judge in light of what the dissertation did not tell us. Most of the variance among opinion-writers remained

unexplained; thus, in the absence of evidence to the contrary, one must conclude that the judge is constrained by the law and the fact situation presented by a given case.

Second, one must conclude that the judge's liberal or conservative propensities in a given case category will tend to be quite similar to those of his colleagues. In this regard, it is interesting to remember that the best single predictor of a liberal/conservative opinion is the type of case. In other words, most opinions in criminal cases favor the state just as do most decisions in economic regulation cases, regardless of the judge's background. Whether such among-judge similarities are due to homogeneity of background, influence of stare decisis, or other influences is outside the scope of this study. However, this agreement is especially apparent among judges sitting at the same time in the same place.

In sum, there is a strong tendency for judges to agree and most liberal/conservative variance remains unexplained. In combination, the unexplained liberal/conservative variance among judges and the level of agreement argue that the individual judge is influenced by "the times" and the spatial settings. The findings here tend to support such a conclusion. Given the importance of non-background constraints such as the law, the fact situation, the time and the place, the question remains--to what extent is our judge's liberalism/conservatism a function of his political party affiliation, appointing president, and/or tenure as a federal judge? Again, one must conclude that studies of individual judges over a substantial time period are of questionable value.

Earlier studies of state and federal appellate courts would predict that our judge's political party affiliation would be the background attribute most closely associated with that judge's policy propensity. Specifically, work by Nagel,³ Goldman,⁴ and others⁵ would predict that Democratic federal district judges would be more liberal than their Republican counterparts. However, Murphy,⁶ Walker,⁷ and others⁸ have found that party affiliation is of almost trivial importance. Taken as a 40-year cross section, this dissertation supports Schmidhauser's judgement that, "It is not clear that the social and political background factors in themselves serve as reliable indicators (sic) of precise patterns of judicial behavior."⁹ Given the weak influence of party over the 40 year period, one may also question whether the relationship found between party affiliation and policy propensity in one-time period and one jurisdiction should be generalized across time and space. These questions are particularly applicable to one-year studies in a single jurisdiction such as those reported by Ulmer from Michigan.¹⁰

The weak effect of party affiliation is consistent with theoretical and empirical work in political science. Most students of the U.S. party system point to the relatively weak policy role played by U.S. parties.¹¹ In fact, Walter Dean Burnham has argued that a declining role of parties as links between the public and public policy represents a threat to the political system's ability to adapt to environmental stress.¹² Further, low party saliency on the courts is consistent with studies of the Congress.¹³ Most recently, Barbara Sinclair has traced the effects of weak party cohesion on Congressional policy outputs.¹⁴

In sum, the minor effect of parties for this 40 year cross slice is consistent with extant work in political science and argues that public law studies of party effects should not focus exclusively on the individual judge or be generalized from narrow time frames. Perhaps more importantly, this work argues that the individual judge may not be an appropriate research subject for students of the federal district courts. Thus, the conclusions of this and other studies not only raise serious questions about the importance of background variables and viability of cross sectional research into the relationship between individual judge's backgrounds and their policy propensities. Put more bluntly, these findings argue that such research is not worthwhile. This argument is consistent with more general criticisms of cross section research in political science.

It is interesting to note that while the arguments against cross section research conflict with much work in judicial behavior, they are consistent with recent work and emerging theory in the nascent field of judicial administration. Concern with administrative questions such as case disposition rates has led scholars such as Stephen Flanders to argue that: "Judges are subject to environmental influences beyond their control; therefore, they are difficult to compare."¹⁵

Virginia Grey recently reported major differences between cross sectional and cross time findings concerning policy expenditures.¹⁶ She concluded that it is simply wrong to infer a relationship between policy-related variables at one point in time from research conducted at another point in time.¹⁷

Finally, by offering only the weakest evidence of a link between the individual judge's characteristics and his policy statements, this research raises serious questions about the generalizability of earlier cross section studies of individual judges and the value of such studies in the future. Such a conclusion should not be surprising. After all, what meaning do background characteristics have outside their social, economic, and political environment? They are important only as surrogates for other, more ideosyncratic, influences. Further, more variance in policy propensities occurs among environments than among individual judges; therefore, the individual judge and his background seem less than ideal targets for the political scientists time and resources.

In spite of the negative conclusions re cross sectional studies based on individual judges, the findings of this dissertation lead to encouraging conclusions about the study of federal district court policies and aggregates of judicial policy-makers. Conclusions will be outlined first for spatial aggregates, then for temporal aggregates.

Space Related Conclusions

Earlier work by Peltason,¹⁸ Vines,¹⁹ and others concerning the importance of localism in judicial policy-making were largely supported. The substantial variance among circuits and among states argues that local influences are indeed important. The differences between jurisdictions are also consistent with the growing body of judicial administration literature. Several recent studies of case loads and case disposition have found that more variance occurs among jurisdictions

than between them.²⁰

The importance of localism also raises the interesting possibility that certain aggregated background characteristics may be linked to policy variance under controls for jurisdiction. The aggregate of Democratic judges may indeed reflect propensities significantly different from the aggregate of Republicans in a given jurisdiction. However, these differences also argue that one should be very cautious about generalizations across spatial units. Thus, Richardson and Vines' work on the Third, Fifth and Eighth Circuits remains a valuable contribution to the study of federal district courts, but may not be generalizable to courts in other circuits.²¹

In a more general sense, the findings here support the importance of regionalism for understanding American politics. Thus, work by Elazar,²² Patterson,²³ and others²⁴ is supported by this study and appears applicable to the judicial setting.

The conclusions outlined above justify continued study of spatial aggregates of judicial policy-makers. Based on this research, at least three new lines of research seem appropriate.

First, data should be aggregated by district, with the district serving as the unit of analysis. As noted above, judicial administration scholars have found that important variance in administrative outputs occurs among districts.²⁵ Based on the spatial differences reported in chapter five, there is every reason to believe that similar variance will be established for authoritative outputs.

Second, further attention should be devoted to among-state differences in federal district court outputs. The study of these differences

should relate judicial policy differences to variance in other political, social, and economic indicators. For example, among-state variance in economic liberalism should be related to variance in economic indicators such as per capita income. Studies which focus on the state will also be able to examine background aggregates more effectively. For example, policy differences between Democrats and Republicans within a state could be predicted by measures of party competition in that state.

Studies which focus on the state as the unit of analysis would help place the courts and judicial policy within the current voluminous body of work on among-state variance in policy outputs and contribute to that important line of research. Numerous authors have criticized the over-reliance on expenditures and on the legislative branch by students of among-state policy variance.²⁶ The study of among-state variance in federal district court policy could help correct both of these shortcomings by focusing questions such as the relative importance of economic and political influences on each state's aggregate of federal district courts.

Time Aggregates

As noted in part one of this chapter, the most important findings reported by this dissertation deal with the importance of variance in judicial outputs across time. Taken together, these time related findings lead this writer to two related sets of conclusions. Each set of conclusions will be discussed in turn along with the implications for both evaluation of extant work and recommendation for future work.

First, one may conclude from this dissertation that univariate

variance among temporal aggregates is important and that temporal units are a legitimate unit of analysis. More specifically, the variety of environmental influences changes over time and each year's aggregate of opinions reflects these changes.

Exploration of variance among temporal aggregates reveals both policy trends and sudden breaks in these trends. For example, univariate analysis of economic regulation cases across time reveals a gradual but clear trend toward federal district court support for government regulation of the economy. On the other hand, univariate analysis across time also reveals a sharp shift toward more liberal policies in non-economic policies after 1969.

Trend analysis of this type also identifies the courts' policy agenda. Perhaps more importantly, this analysis enables one to compare policy trends on the district courts with trends on higher courts and in other branches. Specifically, based on this dissertation's measurement of liberal/conservative trends, one may tentatively conclude that lower court policy statements tend to become more liberal as Supreme Court opinions become more conservative. For example, the percentage of liberal district court opinions has increased steadily for each year between Warren Burger's appointment in 1969 and 1973.

Likewise, one may conclude from this dissertation that the federal district court's policy agenda reflects the larger political agenda, albeit imperfectly. For example, the sharp increase in freedom of expression cases during the Vietnam era reflects the turmoil and conflict associated with an unpopular war.

The pattern of policy trends followed by sudden significant shifts

has not been explored by previous studies of the federal district courts. However, these conclusions do support several writers who have established such patterns for other policy making units. For example, Glendon Schubert and Richard Funston have both identified periods of liberal/conservative and active/restraint stability on the U.S. Supreme Court interrupted by sudden, significant shifts in policy propensity.²⁷

The second set of conclusions to be discussed concerns the interaction between time shifts and the relevance of judicial backgrounds for explaining judicial policy outputs. As noted, one must conclude from this dissertation that both studies of background characteristics over a 40-year cross section and generalizations across time from narrow cross sections are inappropriate. Therefore, one must also conclude that the importance of background variables shifts over time.

First, time segments may be defined by appointing presidents. The aggregate of judges appointed by one president may vary significantly from the aggregate appointed by his predecessor or successor. For example, Nixon appointees are more conservative than Johnson appointees; furthermore, in the aggregate, they are more conservative than the appointees of other Republican presidents.

Appointing president is, of course, time related by definition. Political party affiliation is not. Yet, from this dissertation one may also conclude that steady trends and sudden shifts occur in the relationship between judges' party affiliation and their policy propensities. Party differences do predict policy differences at certain times. Specifically, significant policy differences emerge

between aggregates of Democrats and aggregates of Republicans at certain points in time. For example, party saliency increased dramatically with the election of Richard Nixon and his appointment of Warren Burger.

The shifts in party saliency are most apparent for certain categories of cases. For example, the magnitude of party differences in liberal propensity increased dramatically between 1969 and 1972 for non economic cases. The absence of party differences for recent economic cases is of particular interest. In the current body of judicial behavior literature, party differences tended to be larger for economic than for non-economic case categories. In chapter five, among-circuit variance was greater for economic cases. Yet, since 1969, the differences for economic cases are inconsequential while the differences between party non-economic case categories are large and growing. Interpretation of these shifts is problematic. However, several tentative conclusions may be suggested.

First, the shift may reflect a general decrease in the saliency of the economic issues which defined party differences in the wake of the depression realignment. Indeed, the increasing centrality of civil rights questions to the Democratic party since the Kennedy Administration would seem to reflect a decrease in the saliency of economic issues. However, the party differences are minimal during much of the pro-civil rights Johnson Administration,

A second, more immediate, possibility lies in the nature of the 1968 Nixon presidential campaign and the Nixon presidency. Clearly, neither Nixon in particular nor the Republican Party in general had championed civil rights or civil liberties. In fact, Nixon was widely

perceived as an opponent of both civil rights and civil liberties. On the other hand "law and order" and promises to "get tough on criminals" were central themes of both the 1968 campaign and the Nixon presidency.²⁹ Policy questions involving criminal defendants' rights, civil rights and civil liberties are frequently resolved in the courts; thus, this theme included frequent criticism of "soft" or activist federal judges and promises to replace them with strict constructionists. Given the identity of non-economic issues with the partisan campaign, it seems reasonable that partisan policy goals may have served as cues for both Democrats and Republicans. Thus, as the political saliency of, for example, criminal cases increases, the judge's political party affiliation becomes a better predictor of the liberal/conservative nature of his opinion in such cases.

Third, President Nixon's appointment of Warren Burger to replace Earl Warren and the Supreme Court's subsequent shift toward generally more conservative policy propensities may have enhanced the saliency of party affiliation for judicial policy-making. It seems reasonable that in an era of rapidly changing judicial interpretation and confusing constitutional cues, judges would turn to other cues, such as party affiliation or personal values associated with partisan identification.

In combination, these three possibilities raise the intriguing possibility that major shifts may occur periodically in the relationship between party and policy on the federal district courts. Further, these shifts may focus on certain policy areas defined by the larger political environment. The possible analogies to be drawn with shifts in party saliency after realigning elections are apparent. The validity

of such analogies should be the subject of future inquiry and is discussed in the conclusion of part two.

The conclusions re temporal differences in both the saliency and issue content of party affiliation support recent work in both political science in general and public law in particular. Benjamin Ginsburg has recently offered convincing evidence that the link between party platforms and public policy shifts in conjunction with critical elections.³⁰ David Brady has demonstrated that party saliency increases in the Congress after critical elections,³¹ with party linkages notably important for economic policy after the Depression realignment.³²

Among public law scholars, the combined work of Sheldon Goldman is supported most strongly by conclusions drawn from this research.³³ Goldman's work on the Courts of Appeal has not included trend or time series analysis but he is one of the few public law scholars to examine the same questions at two points in time. He found a change in party saliency at the appeals level very much analogous to the shifts identified here for the federal district courts.³⁴

The shift in party saliency over time has ironic implications for earlier studies of the linkage between party affiliation and judicial decision-making. Most of these studies were conducted during the peak of behavioralism. The 40-year time span studied here indicates that the behavioral era coincided with the low ebb of between-party differences on the federal district courts. Thus, Thomas Walker found no difference between Democratic and Republican civil liberties opinions issued between 1963 and 1968; however, substantial differences began to appear in 1969, after the appointment of Warren Burger to the Supreme

Court.

Clearly, this dissertation argues for a strong commitment to time-related studies in the future. A heuristic model for organizing such studies is presented in part three below. However, at least two important substantive questions generated by this dissertation can be examined using the same methods employed here.

First, the work should be updated to the present to determine whether pre-1972 trends extend to the present. Likewise, the examination of party differences should be extended back in time to 1933. By extending the work from 1933 to the present, other significant shifts and trends can be identified. More importantly, evidence can be mustered to develop theories which can explain and predict change over time.

Second, studies in the near future should address the question of whether change over time is a function of change in judicial personnel or of changes in the policy propensities of individual judges. Such studies can be conducted with the data at hand by looking at change over time while controlling for year of appointment or for appointing president.

Part Three: Methodological Conclusions and Suggestions for the Future

This discussion of methodology will proceed in three steps:

- 1) Conclusions will be drawn concerning the use of opinions reported in the Federal Supplement as the basic data source for the study of federal district courts.

- 2) Conclusions will be drawn concerning the gathering and coding of data drawn from federal district court opinions.
- 3) A research model will be suggested which is sensitive to the interaction between temporal, spatial, and background variables.

The Use of Opinions as Basic Data Source

Dolbeare's arguments outlined in chapter one remain persuasive-- i.e., opinions published in the Federal Supplement are the only practical source of federal district court output data. However, several limitations on the use of these opinions were indicated by this research.

First, one must remember that a relatively small percentage of decisions result in published opinions. Further, it is not clear from this dissertation or from published work in the field whether opinions are typical of the population of judicial decisions. Certainly one may not conclude from this dissertation that published opinions represent a random sample of decisions from which one can generalize to the population of district judges.

On the other hand, one may conclude that opinions are quite valuable when viewed as statements of judicial policy outputs rather than as samples of judicial decisions. This view supports Jacob's position that district court opinions are largely reserved for those decisions which contribute to the authoritative allocation of values.³⁵

Thus, published opinions in a given case category do represent the population of relevant policy statements. Therefore, if one seeks to study policy outputs and policy patterns rather than decision-making

by individual judges, published opinions are a proper as well as convenient data source.

In sum, methodological considerations may be added to the substantive arguments for focusing on policy patterns as defined by policy statements across policy-making aggregates rather than focusing on the individual judge. Opinions are a valid data source as the sum of policy statements for a given policy making aggregate even though they may not be valid indicators of the decision-making propensities of individual judges.

Gathering and Coding

One may conclude from this dissertation that published opinions are an appropriate data source. However, several modifications in the gathering and coding of this data seem appropriate. Four modifications will be suggested.

First, data from published opinions should be supplemented by data from other sources. Open ended interviews with active judges should add insight and help humanize a largely quantitative endeavor. Further, once opinions are aggregated by spatial and temporal units, opinion data should be supplemented by data from aggregate data sources. For example, data concerning case loads and case disposition rates is aggregated by district and by circuit and published annually by the Administrative Office of the U.S. Courts.³⁶

The availability of supplemental data sources is related to a second recommendation. Data should be gathered and coded that will permit the study of a variety of dependent variables. The study of

liberal propensity should be supplemented by the study of dependent variables such as propensity to support the government and case disposition rates. Such variables may be created by data from new sources and by recoding of current data.

Third, if liberal/conservative propensity is maintained as a dependent variable, modification should be made in the coding of labor cases. For this dissertation, decisions which favored the union over the individual worker were coded as liberal. Such a definition is consistent with work by Schubert and others which identifies economic liberalism as decisions which favor the collective over the individual in economic questions.³⁷ However, it seems reasonable that such cases could be classified by placing the unorganized worker in the "underdog" role and defining liberal decisions as those which favor the underdog, or less-organized, litigant. Such a scheme would be consistent with the current convention of defining decisions as liberal which favor the unorganized worker against management. At the very least, future work should carefully reconsider operational definitions of liberalism in labor cases.

Fourth, certain case categories should be discontinued while others should be added. Specifically, contempt of court cases proved ambivalent and extremely difficult to interpret in policy terms. Likewise, the number of Indian cases was trivial and recent cases are virtually non-existent. On the other hand, new categories or sub-categories should be added in several areas to facilitate longitudinal study of the impact of specific statutes or higher court decisions on lower court policy propensities. For example, right-to-counsel policy statements

could be compared before and after *Gideon v Wainwright*, 372 U.S. 335 (1963) if a right-to-counsel subcategory were established. Admittedly such categories would be small and their number would be cumbersome; however, small categories can always be collapsed into larger ones for analysis, while the reverse is not possible. Most importantly, an increase in the number of case categories would correspond with a concurrent increase in the quantity and sophistication of substantive questions which can be addressed.

Suggested Model for Future Research

As noted in part two of this chapter, temporal effects should be the focal point of future research into judicial policy propensity at the federal district court level. Whether one wishes to study liberal/conservative variance or variance along some other dimension, such as propensity to support the government, one should begin by graphically describing variance across time.

After graphic description, some form of serial correlation coefficient should be computed to determine whether observations are statistically independent or whether dependent variable values are partially a function of auto correlation.³⁸ Statistical independence among years must be established if one is to fit a line which defines a trend(s) in the proportion of liberal decisions returned.

Serial correlation between years in a series is defined as the standardized covariation of the terms in a series;³⁹

$$r_1 = \frac{\text{COV } (X_i) (X_{i+1})}{\sqrt{\text{VAR } (X_i) \text{ VAR } (X_{i+1})}}$$

where: COV = covariance

VAR = variance

X_i = value of X at time i

X_{i+1} = value of X at time i+1

Reference can be made to a standard table of the distribution of serial correlation coefficients to determine whether the serial correlation produced by our data is statistically significant. If it is not, each year's proportion may be treated as independent--i.e., this year's proportion is not a function of last year's proportion and time may be said to have an independent effect. If, however, the serial correlation coefficient is significant, the assumption of independence cannot be met and no meaningful time effect can be supported.

If the serial correlation coefficient indicates independence between years, a trend line may be fit which minimizes the difference between the observed proportion and an estimated proportion based on trends in the frequency of liberal opinions over time. Regression analysis can be used to fit a line defined by a least squares equation which minimizes the sum of the squared differences between observed and estimated liberal proportion for each year. This may be accomplished by first establishing the middle years of a time span. For this dissertation's data set, 1952 and 1953 would be assigned the X values of -1 and 1, respectively. Then each other year would be assigned a value whose magnitude and sign are a function of its temporal distance from 1952 and 1953:

1933		49	50	51	52	53	54	55	56		1972
-20.....	-4	-3	-2	-1	1	2	3	4.....		20	

A line defined by estimated values of the dependent variable proportions of liberal opinion may be fit to the observed distribution of liberal proportion using the basic regression formula for each year:

$$Y = a + b_i X_k$$

where: Y' = estimated proportion of liberal opinions

$$a = \frac{\sum X_i Y_i}{\sum X_i^2} = \text{the constant (Y intercept)}$$

$$b = \frac{\sum Y_i}{N} = \text{the regression coefficient}$$

where: X_i = the value assigned to each year

Y_i = the observed proportion for that year

n = the number of years

(If predictions made on the basis of the linear equation $Y = a + bX$ prove inadequate to describe this trend, a series on non-linear trend curves can be tested.)

The description of change across time points defined by the year in which an opinion is issued will present a picture of trends (or the lack of trends) in federal district court policy propensities. This approach will facilitate the study of specific case types (race relations, for eg.) and evaluation of the impact of outside effects (Civil Rights Act of 1964 for eg.).⁴⁰ Alternatively, this model will suggest temporal controls for the dependent variable in any study of

the effects on non-temporal dependent variables.

After establishing trends measuring the effects of time and applying appropriate controls for time, spatial effects may be added to the model. As suggested in part two above, opinions may be aggregated by state (or district) with the state treated as the unit of analysis. Policy propensity variance could, for example, be measured across states and related to variance among states in aggregate indicators such as per capita income.

Aggregation by state under control for time would also facilitate the application of sophisticated factor analysis techniques to locate patterns of inter state congruence of policy propensities. Such patterns could be fruitfully compared to policy homogeneity patterns hypothesized by Elazar,⁴¹ or Sharkansky.⁴² If clear policy propensity patterns are identified, these analytic groupings may serve as more effective units of analysis than current regions defined by states or circuits.

In addition to serving as a unit of analysis, such state aggregates may be utilized along with time aggregates as controls when judicial background characteristics are added to the model. Thus, background characteristics such as party affiliation remain part of this heuristic model for the study of variance in judicial policy propensities, but only when measured across time or under controls for time and area. Other background characteristics such as appointing president and length of judicial tenure should also be considered, but only across time or under appropriate controls for time and era.

In sum, the suggested model for the study of district court policy propensities begins with careful analysis of variance over time. Such

analysis identifies trends (or their absence) measures the effects of time differences and suggests controls for other independent variables. Under such controls, space effects may be tested and/or analytically defined spatial patterns may be identified. Finally, the effects of background characteristics should be added to the model only under control for spatial as well as temporal differences.

Such a model is not limited to the study of liberal/conservative variance. It could and should be applied to the study of variance in other outputs, such as propensity to return opinions supporting the government or opinion writing propensity. With its close attention to temporal differences and effects, this model is especially appropriate for testing the effects of events outside the district courts on the policy propensities within the district courts. Its first application should be to examine the Nixon/Burger effect suggested in chapter six by extending the time frame from 1933 to the present. If the effects on party differences suggested in chapter six are maintained under more extended and methodologically rigorous examination, analysis based on the heuristic model suggested here may in turn suggest a substantive model of the interaction between temporal and partisan influences on federal district court policy outputs. More importantly, such a model may contribute to the understanding of temporal, spatial, and partisan effects on the more general policy process.

NOTES

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²Kenneth M. Vines, "Federal District Judges and Race Relations Cases in the South," Journal of Politics (1964), pp. 337-57.

³Stewart S. Nagel, "Backgrounds and Criminal Cases," Journal of Criminal Law, Criminology and Police Science, Vol. 53, 1962, pp. 333-9 and "Political Party Affiliation and Judges' Decisions," American Political Science Review, Vol. 55 (1961), p. 843.

⁴Sheldon Goldman, "Voting Behavior on the United States Courts of Appeals Revisited," American Political Science Review, Vol. 69 (1975), pp. 491-506.

⁵See, for example, Sidney Ulmer, "The Political Party Variable in the Michigan Supreme Court," Journal of Public Law, Vol. 11 (1962), pp. 352-62.

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⁷Thomas Walker, "A Note Concerning Partisan Influences on Trial Judge Decision-Making" Law and Society Review, Vol. 6, May 1972.

⁸See, for example, John Schmidhauser, The Supreme Court: Its Politics, Personalities, and Procedures (New York: Holt, Rinehart and Winston, 1960).

⁹*Ibid*, p. 57.

¹⁰Ulmer, *op. cit.*

¹¹See Frank J. Sarouf, Party Politics in America (Boston: Little, Brown, and Co., 1976); Theodore Lowi, "Toward Functionalism in Political Science: The Case of Innovation in Party Systems," American Political Science Review, LVII (1963) pp. 570-83.

¹²Walter D. Burnham, Critical Elections and the Mainsprings of American Politics (New York: Norton, 1970). Also, "The End of Party Politics," Transaction (Dec. 1969).

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¹⁸Jack Peltason, Fifty Eight Lonely Men: Southern Judges and School Desegregation (New York: Harcourt, Brace & Jovanovich, 1961).

¹⁹Vines, op. cit.

²⁰See Stephen Flanders, "Judicial Disposition Rates: The Local Environment, the Process, or the Person," paper presented at the 1975 Annual Meeting of the American Political Science Association, San Francisco.

²¹Richard Richardson and Kenneth Vines, The Politics of Federal Courts (Boston: Little, Brown and Co., 1970).

²²Daniel Elazar, American Federalism: The View from the States (New York: Thomas Crowell and Co., 1966).

²³Jewell and Patterson, op. cit.

²⁴Ira Sharkansky, Regionalism in American Politics (New York: Bobbs-Merrill, 1970).

²⁵Flanders, op. cit.; also, David Neubauer, "Case Management in Three Federal District Courts: An Organizational Perspective," paper presented to the Application of Organization Theory to Trial Courts, Palo Alto, Calif., Aug. 23, 1975.

²⁶For a summary of this position, see Austin Ranney (ed.) Political Science and Public Policy (Chicago: Markham Publishing Co., 1968).

²⁷Glendon Schubert, Judicial Policy Making: The Political Role of the Courts (Glenview, Ill.: Scott, Foresman and Co., 1974) and Richard Funston, "The Supreme Court and Critical Elections," American Political Science Review (Sept., 1975) pp. 795-811.

²⁸For a good summary of this position, see Jewell and Patterson, op. cit.

²⁹See Schubert, Judicial Policy Making, op. cit., for a summary.

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³²Ibid.

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³⁴Ibid.

³⁵Herbert Jacobs, Justice in America, 2nd Edition (Boston: Little, Brown and Co., 1972), p. 31.

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³⁷See Glendon Schubert, The Judicial Mind Revisited: Psychometric Analysis of Supreme Court Ideology (New York: Oxford University Press, 1974).

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⁴⁰For applicable statistical methods, see C. Chatfield, The Analysis of Time Series: Theory and Practice (New York: John Wiley and Sons, 1975) (Mc-Graw-Hill, 1950).

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⁴²Ira Sharkansky, op. cit.

A P P E N D I X

APPENDIX A

DESCRIPTION OF ANALYZED CASE CATEGORIES

- (1) Habeas corpus - U.S.: includes all petitions for habeas corpus by criminal defendants in the custody of the United States government.
- (2) Habeas corpus - State: includes all petitions for habeas corpus and any other pleas from state prisoners to the federal district courts.
- (3) Motions made immediately before, during, or after trial: includes motions made by U.S. criminal defendants to federal district judges during the course of the defendant's criminal proceeding. Examples include motion for a change of venue, motions to suppress evidence, motions for a new trial, motions for a reduction of sentence.
- (4) Contempt of court: includes all civil and criminal headings before federal judges where the defendant is charged with contempt of court.
- (5) Conviction or non-conviction of a criminal offense: whether or not the defendant was found guilty or innocent of the criminal offense for which he was charged.
- (6) Alien petitions: includes all petitions to federal district courts from aliens. Examples include petitions to become U.S. citizens, petitions to enjoin revocation of citizenship proceedings commenced by the Secretary of State.
- (7) Indian rights and law: includes all suits between Indian tribes and a local, state, or the national government or between an Indian tribe and a private party. This category does not include suits between various Indian tribes, however.
- (8) Voting cases: includes all cases where the primary issue is the right to vote. Examples include challenges on one's right to vote because of race, education, or place or residence. It also includes all apportionment cases.
- (9) Racial minority discrimination: includes all cases where the defendants are non-Anglo and where the racial factor is obviously the primary issue at stake. This also includes cases involving labor relations where a Black or Mexican-American is suing a union or company.
- (10) U.S. Civil Rights Act cases: includes all cases involving the 14th Amendment equal protection clause, privileges and immunities, and the various pieces of Congressional legislation which have been passed to implement the 14th Amendment. However, not included in this category are cases involving the right to vote or cases dealing with the race issue, which are coded in separate categories.

- (11) Military exclusion cases: includes all cases dealing with the exclusion of persons from specially designated geographic areas during the Second World War.
- (12) Freedom of expression: includes all cases dealing with the right to petition the government, freedom of the press, freedom of speech.
- (13) Freedom of religion: includes all cases dealing with the establishment or free exercise clauses of the First Amendment. Also included in this category are cases involving conscientious objectors.
- (14) Union v. company: includes all cases where a labor union and a corporation are involved in a labor dispute.
- (15) Union members v. union (or employees v. union): includes all cases where specific members of a union or where non-union employees of a company are suing the union at the company. Not included in this or any other category are suits between various unions.
- (16) Employee v. employer: includes all labor disputes between a company and its non-union employees.
- (17) Commercial regulation: includes all suits brought by an agency of the federal government, e.g., the agriculture department, an independent regulatory agency, the anti-trust division of the Attorney General's Office, which deal with regulation of the economy.
- (18) Pure food and drug cases: includes those cases not included in item #18 which deal specifically with suits brought by the government against those who have violated the pure food and drug acts. This category also includes cases pertaining to consumer protection cases and cases dealing with environmental and pollution litigation.
- (19) Local economic regulation: includes all cases testing the authority of a state or local government to regulate the economic lives of their citizens. Examples include the right of a state to tax a company within its jurisdiction or the authority of a city to regulate the profits of a utility. Not included in this or any other category is the right of eminent domain.
- (20) Labor cases: includes all cases involving the Fair Labor Standards Act, all labor cases brought by the Secretary of Labor or the National Labor Relations Board against either a company or a labor union.
- (21) Rent control, excessive profit, price control: includes all cases dealing with the power of the federal government to specifically regulate the before-mentioned economic matters.

APPENDIX B

LOCAL ECONOMIC REGULATION CASES

	DEM			REP				DEM			REP				
First	X	Δ	\bar{X}	Δ	Δ		Fifth	X	Δ	\bar{X}	Δ	Δ	Δ		
Me.	-	-	100	0			Ala	100	0	0	0				
			(1)					(1)		(1)					
Mass.	83	29	100	0			Fla	73	35	50	41				
			(2)					(11)		(4)					
NH	75	0	-	-			Ga	59	59	0	0				
	(1)							(8)		(1)					
RI	100	0	-	-			La	83	27	0	0				
	(1)							(10)		(1)					
PR	100	0	0	0			Miss	25	42	-	-				
	(1)		(1)					(6)							
VI							Tex	83	41	56	41				
								(6)		(6)					
<u>Second</u>							<u>Sixth</u>								
Conn	100	0	0	0			Kt	22	39	0	0				
	(3)		(1)					(3)		(1)					
NY	75	45	81	36			Mi	59	50	33	52				
	(12)		(15)					(8)		(6)					
Vt	0	0					Oh	63	48	50	71				
	(1)							(4)		(2)					
<u>Third</u>							Ten	75	42	-	-				
Del	100	0	0	0				(6)							
	(1)		(2)				<u>Seventh</u>								
NJ	67	47	74	39			Ill.	63	52	67	52				
	(2)		(6)					(8)		(6)					
Pa	83	39	85	32			Ind.	0	0	50	71				
	(12)		(11)					(1)		(2)					
<u>Fourth</u>							Wisc.	80	45	100	0				
Md	100	0	50	71				(5)		(6)					
	(1)		(2)				<u>Eighth</u>								
NC	100	0	-	-			Ark.	100	0	50	0				
	(2)							(2)		(1)					
SC	88	25	-	-			Iwa.	-	-	33	29				
	(4)									(3)					
Va	100	0	100	0			Minn.	75	29	50	71				
	(1)		(2)					(4)		(2)					
W.Va	50	71	0	0			Mo.	83	41	75	50				
	(2)		(1)					(6)		(4)					
							Neb.	67	42	100	0				
								(2)		(1)					
							ND	-	-	-	-				
							SD	100	0	0	0				
								(1)		(1)					

Local Economic Regulation Cases (Continued)

<u>Ninth</u>	Dem		Rep		Δ
	X	μ	\bar{X}	$\bar{\mu}$	
Alas	57 (2)	10	38 (2)	53	
Ari	-	-	-	-	
Cal	100 (8)	0	33 (6)	52	
Haw	67 (1)	0	-	-	
Id.	-	-	60 (1)	0	
Mon.	-	-	0 (1)	0	
Nev	-	-	0 (1)	0	
Ore	-	-	100 (3)	0	
Wa	0 (1)	0	67 (1)	0	
Guam	100 (1)	0	-	-	
<u>Tenth</u>					
Col.	88 (2)	18	100 (3)	0	
Kan.	100 (1)	0	0 (1)	0	
NM	100 (1)	0	-	-	
Okla.	75 (4)	50	27 (2)	9	
Uth	-	-	100 (1)	0	
Wy	-	-	0 (1)	0	

PARTY DIFFERENCES BY STATE-CRIMINAL DEFENDANT CASES

First	Dem		Rep		Δ	Fifth (Cont.)	Dem		Rep		Δ
	X	\sim	\bar{X}	\sim			X	\sim	\bar{X}	\sim	
Me	7	0	11	16		Tex	38	36	8	12	
	(1)		(2)				(20)		(6)		
Mass	17	17	17	13		Sixth					
	(5)		(4)			Kt	16	11	0	0	
NH	67	0	0	0			(5)		(1)		
	(1)		(1)			Mi	41	37	28	36	
RI	75	0	0	0			(9)		(8)		
	(1)		(1)			Oh	52	35	33	58	
PR	33	0	0	0			(11)		(3)		
	(1)		(1)			Ten	41	44	35	50	
VI							(8)		(2)		
Second						Seventh					
Conn	58	30	33	29		Ill.	54	39	23	29	
	(8)		(3)				(12)		(13)		
NY	22	25	26	33		Ind	33	58	28	32	
	(36)		(26)				(3)		(4)		
Vt	75	75				Wisc.	34	16	9	0	
	(1)						(4)		(1)		
Third						Eighth					
Del	44	50	51	48		Ark.	20	24	8	11	
	(3)		(5)				(4)		(2)		
NJ	26	33	34	40		Iwa.	33	58	42	12	
	(9)		(9)				(3)		(2)		
Pa	33	30	21	28		Minn.	30	32	9	10	
	(24)		(25)				(4)		(3)		
Fourth						Mo	18	24	25	29	
Md	33	13	3	6			(11)		(4)		
	(4)		(4)			Neb	33	47	13	18	
NC	34	23	51	50			(2)		(2)		
	(5)		(3)			ND	63	53	17	24	
SC	36	35	-	-			(2)		(2)		
	(6)					SD	24	0	17	29	
Va	18	27	25	18			(1)		(3)		
	(7)		(4)			Ninth					
W.Va	24	22	22	39		Alas	25	35	58	52	
	(5)		(3)				(2)		(3)		
Fifth						Ari	17	29	-	-	
Ala	0	0	28	26			(5)				
	(5)		(3)			Cal.	39	36	17	32	
Fla	35	28	71	34			(23)		(22)		
	(16)		(6)			Haw.	55	7	67	0	
Ga	26	33	37	32			(2)		(1)		
	(12)		(3)			Id.	25	35	0	0	
La	36	38	67	47			(2)		(2)		
	(12)		(2)			Mon.	47	4	0	0	
Miss	26	17	-	-			(2)		(3)		
	(5)					Nev	22	0	100	0	
							(1)		(1)		

Party Differences By State-Criminal Defendant Cases (Continued)

<u>Ninth</u> (Continued)	<u>Dem</u>		<u>Rep</u>		Δ
	X	Δ	\bar{X}	Δ	
Ore	17 (2)	24	3 (3)	5	
Wa	38 (4)	29	25 (4)	29	
Guam					
<u>Tenth</u>					
Col	36 (2)	4	28 (2)	15	
Kan	22 (5)	23	10 (3)	9	
NM	50 (2)	71	0 (1)	0	
Okla	20 (5)	31	33 (1)	0	
Utah	100 (1)	0	41 (1)	0	
Wy	-	-	17 (2)	24	
DC	57 (13)	41	17 (8)	21	

CLASS DISCRIMINATION CASES

	Dem		Rep		Δ		Dem		Rep		Δ
	X	N	X	N			X	N	X	N	
<u>First</u>											
Me	100	0	0	0							
	(1)		(1)								
Mass	44	36	34	7							
	(9)		(4)								
NH	86	0	-	-							
	(1)										
RI	56	52	63	53							
	(2)		(2)								
PR	50	0	0	0							
	(2)		(1)								
VI											
<u>Second</u>											
Conn	48	30	65	31							
	(9)		(3)								
NY	35	30	35	31							
	(36)		(39)								
VT	75	0	50	71							
	(1)		(2)								
<u>Third</u>											
Del	33	58	47	42							
	(3)		(3)								
NJ	43	35	26	35							
	(7)		(10)								
Pa	42	31	28	33							
	(23)		(31)								
<u>Fourth</u>											
Md	-	-	15	0							
			(1)								
NC	46	32	37	30							
	(7)		(4)								
SC	35	40	0	0							
	(10)		(1)								
Va	36	27	16	22							
	(7)		(5)								
W.V.	38	48	0	0							
	(4)		(2)								
<u>Fifth</u>											
Ala	50	36	54	32							
	(5)		(4)								
Fla	58	37	44	36							
	(15)		(4)								
Ga	66	33	66	32							
	(9)		(3)								
<u>Fifth (Cont.)</u>											
La	58	29	25	35							
	(13)		(2)								
Miss	53	34	-	-							
	(7)										
Tex	49	40	45	43							
	(23)		(7)								
<u>Sixth</u>											
Kt	30	36	50	0							
	(3)		(1)								
Mi	40	31	29	38							
	(11)		(8)								
Oh	61	42	27	38							
	(12)		(5)								
Ten	59	32	58	52							
	(7)		(3)								
<u>Seventh</u>											
Ill.	59	40	51	38							
	(11)		(11)								
Ind	31	41	58	50							
	(5)		(4)								
Wisc.	58	34	33	0							
	(6)		(1)								
<u>Eighth</u>											
Ark	39	39	52	11							
	(6)		(2)								
Iwa.	100	0	58	52							
	(2)		(3)								
Minn.	55	32	42	12							
	(5)		(2)								
Mo	38	33	10	19							
	(9)		(7)								
Neb	50	71	40	35							
	(2)		(3)								
ND	0	0	-	-							
	(2)										
SD	-	-	-	-							
<u>Ninth</u>											
Alas	-	-	50	71							
			(2)								
Ari	100	0	-	-							
	(4)										
Cal.	48	26	38	40							
	(28)		(26)								

Class Discrimination Cases (Cont.)

<u>Ninth (Cont.)</u>	Dem		Rep	
	X	Δ	\bar{X}	Δ
Haw	74 (3)	28	69 (2)	44
Id	-	-	100 (1)	0
Mon	33 (1)	0	100 (2)	0
Nev	0 (1)	0	0 (1)	0
Ore	63 (2)	53	43 (3)	51
Wa.	50 (6)	55	-	-
Guam	0 (1)	0	50 (2)	71
<u>Tenth</u>				
Col.	64 (1)	0	33 (3)	29
Kan.	28 (3)	30	25 (2)	35
NM	33 (2)	47	33 (1)	0
Okla	39 (3)	38	-	-
Utah	100 (1)	0	50 (2)	71
Wy	-	-	0 (2)	0
DC	53 (14)	32	58 (14)	36

FREEDOM OF EXPRESSION CASES

First	Dem		Rep		Δ	Fifth (Cont.)	Dem		Rep		Δ
	X	\bar{X}	\bar{X}	\bar{X}			X	\bar{X}	\bar{X}	\bar{X}	
Me	-	-	88	-	-	La	44	39	0	-	+44
			(1)				(11)		(1)		
Mass	78	22	50	49	+28	Miss	49	35	-	-	-
	(5)		(9)				(4)				
NH	95	7	100	-	- 5	Tex	59	42	44	10	+15
	(2)		(1)				(15)		(3)		
RI	20	-	75	-	+25	CZ	-	-	-	-	-
	(2)		(1)								
PR	0	-	50	-	-50	<u>Sixth</u>					
	(1)		(1)			Kt	67	41	-	-	-
VI	-	-	-	-	-		(5)				
<u>Second</u>						Mi	55	37	25	50	+30
Conn	31	24	25	35	+ 6		(9)		(4)		
	(4)		(2)			Oh	40	50	17	41	+23
NY	41	34	47	38	- 6		(7)		(6)		
	(28)		(27)			Ten	37	32	60	-	-23
Vt	-	-	100	-	-		(3)		(1)		
			(1)			<u>Seventh</u>					
<u>Third</u>						III.	25	39	58	44	-33
Del	25	35	67	57	-42		(13)		(10)		
	(2)		(3)			Ind.	67	47	0	0	+67
NJ	42	12	60	54	-18		(4)		(2)		
	(27)		(5)			Wisc.	53	38	67	0	-14
Pa	57	41	55	40	+ 2		(4)		(1)		
	(20)		(23)			<u>Eighth</u>					
<u>Fourth</u>						Ark.	17	29	25	35	- 8
Md	60	43	46	42	+14		(3)		(2)		
	(4)		(4)			Iwa.	-	-	46	44	-
NC	71	25	0	-	+71				(3)		
	(4)		(3)			Minn.	65	13	19	27	+46
SC	44	45	0	-	+44		(3)		(2)		
	(7)		(1)			Mo	57	37	0	-	+57
Va	33	47	58	38	-25		(7)		(3)		
	(5)		(3)			Neb	50	0	44	51	-
W.Va.	56	31	50	71	+ 6		(1)		(3)		
	(4)		(2)			ND	100	-	50	0	-
<u>Fifth</u>							(1)		(1)		
Ala	67	58	48	32	+19	SD	100	-	-	-	-
	(3)		(4)				(1)				
Fla	59	39	25	50	+25	<u>Ninth</u>					
	(9)		(4)			Alas	-	-	0	0	
Ga	29	30	33	38	- 4				(2)		
	(9)		(4)			Ari	25	35	-	-	
							(2)				
						Cal.	44	40	43	43	
							(17)		(20)		

Freedom of Expression Cases (Continued)

Ninth (Cont.)	Dem		Rep		Δ
	X	Δ	\bar{X}	Δ	
Haw.	83 (3)	29	50 (2)	71	
Id.	0 (1)	0	83 (2)	24	
Mon.	100 (1)	0			
Nev	0 (1)	0			
Ore	75 (2)	35	28 (3)	26	
Wa	40 (5)	42	0 (1)	0	
Guam					
<u>Tenth</u>					
Col.	22 (1)	0	15 (4)	30	
Kan.	33 (3)	48	0 (2)	0	
NM	0 (1)	0			
Okla	11 (3)	19			
Utah	100 (1)	0	0 (2)	0	
Wy			17 (2)	24	
DC	59 (13)	42	43 (10)	47	+16

LABOR CASES									
	Dem		Rep			Dem		Rep	
<u>First</u>	X	Δ	\bar{X}	Δ	<u>Fifth (Cont.)</u>	X	Δ	\bar{X}	Δ
Me.	100	0	50	0	Miss.	70	45	-	-
	(1)		(1)			(5)			
Mass	59	44	32	21	Tex	39	44	61	54
	(5)		(4)			(15)		(3)	
NH	88	18	-	-	CZ	67	0	-	-
	(2)					(1)			
RI	100	0	13	0	<u>Sixth</u>				
	(1)		(1)		Kt	35	28	17	0
PR	88	18	25	0		(4)		(1)	
	(2)		(1)		Mi	52	47	67	41
VI						(7)		(6)	
<u>Second</u>					Oh	55	35	13	25
Conn	49	17	41	42		(9)		(4)	
	(4)		(3)		Ten	58	34	42	52
NY	49	37	32	34		(6)		(3)	
	(30)		(33)		<u>Seventh</u>				
Vt			0	0	Ill.	36	31	26	35
			(1)			(12)		(12)	
<u>Third</u>					Ind	72	38	33	58
Del	0	0	-	-		(4)		(3)	
	(3)				Wisc.	43	46	33	0
NJ	35	20	41	45		(6)		(1)	
	(6)		(7)		<u>Eighth</u>				
Pa	53	29	58	38	Ark.	22	40	25	0
	(21)		(28)			(6)		(1)	
<u>Fourth</u>					Iwa	25	35	44	51
Md	48	44	39	35		(2)		(3)	
	(4)		(3)		Minn.	68	33	55	39
NC	76	37	43	33		(5)		(3)	
	(6)		(2)		Mo	40	41	38	38
SC	27	44	-	-		(10)		(6)	
	(5)				Neb			89	19
Va	50	55	51	50				(3)	
	(6)		(5)		ND	-	-	67	47
W. Va.	34	30	0	0				(2)	
	(4)		(3)		SD	-	-	0	0
								(1)	
<u>Fifth</u>					<u>Ninth</u>				
Ala	13	25	63	48	Alas	50	71	0	0
	(4)		(4)			(2)		(1)	
Fla	58	50	30	45	Ari	0	0	-	-
	(8)		(5)			(1)			
Ga	35	44	12	27	Cal.	32	39	36	42
	(8)		(5)			(10)		(10)	
La	53	36	10	14	Haw	0	0	0	0
	(11)		(2)			(1)		(1)	

Labor Cases (Continued)				
Ninth (cont.)	Dem		Rep	
	X	Δ	\bar{X}	Δ
Id.	0	0	100	0
	(2)		(1)	
Mon	71	6	-	-
	(2)			
Nev	100	0	50	71
	(2)		(2)	
Ore	11	19	46	20
	(3)		(3)	
Wa	75	50	50	71
	(4)		(2)	
Guam				
<u>Tenth</u>				
Col.	25	35	53	41
	(2)		(3)	
Kan.	33	58	25	35
	(3)		(2)	
NH			0	0
			(1)	
Okla	58	45	0	0
	(5)		(1)	
Utah			0	0
			(1)	
Wy			17	24
			(2)	
DC	17	41	75	42
	(6)		(6)	

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