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**"LET THE END BE LEGITIMATE": AN ANALYSIS OF FEDERAL DISTRICT
COURT DECISION MAKING IN VOTING RIGHTS CASES, 1965-1993.**

THESIS

**Presented to the Graduate Council of the
University of North Texas in partial
Fulfillment of the Requirements**

**For the Degree of
MASTER OF ARTS**

By

Jennifer Marie Morbitt, BA

Denton, Texas

May, 1998

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Integrated process models that combine both legal and extralegal variables provide a more accurate specification of the judicial decision making process and capture the complexity of the factors that shape judicial behavior. Judicial decision making theories borrow heavily from U.S. Supreme Court research, however, such theories may not automatically be applicable to the lower federal bench. I use vote dilution cases originating in the federal district courts from the years 1965 to 1993 to examine what motivates the behavior of district and circuit court judges. I use an integrated process model to assess what factors are important to the adjudication process and if there are significant differences between federal district and appellate court judges in decision making.

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CHAPTER I

INTRODUCTION

Judicial scholars have pondered for decades exactly what factors influence a judge's decision making process. Early research concentrated on the Supreme Court, but since the early seventies scholars have begun to expand studies to both the appellate and the federal district courts. Some insightful research has centered on comparing appellate court decision making to that of the Supreme Court (Songer, Segal, and Cameron 1994; Gruhl 1980; Johnson 1987). Comparisons of the federal district courts to either of the appellate courts or Supreme Court, however, have been few and far between. Now that scholars are moving more and more in this direction, the field should be able to make advances in understanding what role judicial hierarchy plays in the decision making process. Are trial and appellate court judges constrained by the same set of decision making conditions that apply to the Supreme Court?

Early students of judicial decision making believed that jurisprudence is an application of precedent and that outcomes are a function of legal advocacy and neutral arbiters (see Horwitz 1987). In contemplating a decision, judges consider the legal principles at issue, the disputed facts, and the applicable stare decisis (Coffin 1994; Johnson 1987). All of the factors mentioned above are believed to be embedded within the decision making process, and therefore inherently constrain the discretion of the decision maker. Thus, the conclusion is that judges have no choice but to decide cases according to

these legal rules. Although this theory still dominates the training of lawyers and judges today, for some time now behavioral scholars have questioned the validity of the underlying assumptions of the legal approach.

In contrast, extralegal theories of decision making posit that nonlegal factors such as attitudes and personal attributes are the driving force behind any judicial decision and that judges interpret legal issues with specific personal policy preferences in mind. Every area of law has a grey area in which judges are able to maneuver with more freedom and discretion when making a decision. We see evidence of this phenomenon on the Supreme Court in the form of dissenting and concurring opinions. Oftentimes, nine different people cannot agree on how to interpret the content of the Constitution. Under the extralegal perspective, judges are anything but judicial arbiters. Rather, they are just the opposite. During the decision making process they are partisan advocates whose behavior is motivated by their own personal biases.

Many scholars have accepted, especially at the Supreme Court level, that extralegal theories do quite well in explaining the decision making process (Segal and Spaeth 1993, Rhode and Spaeth 1976). However, recent research has begun to question whether or not these theories are appropriate at all levels of the judiciary. Many studies have begun to utilize integrated process models that incorporate both legal and extralegal theories of decision making (Lloyd 1995; George and Epstein 1992; Hall and Brace 1992; Epstein, Walker, Dixon 1989). The aforementioned studies have enjoyed more predictive and explanatory success when combining both legal and extralegal aspects into one model than when they are examined alone. Thus, such research provides intuitive advantages to

understanding judicial decision making because it affords the opportunity to explore the complex legal and extralegal environments when they interact during the judge's decision making process.

Even if we accept it as accurate that Supreme Court justices refer to ideological or attitudinal criteria in decision making, it may be unwise to automatically assume we can adopt this theory for all other levels of the courts. There may be differences in role and job orientations at the appellate and federal district courts that predispose these judges to adhere to differing criteria in decision making. Due to the nature of a district court judge's job, these judges are more attuned than their appellate court counterparts to micro-level indicators such as the facts and issues in a case. District judges are required to sift through countless evidentiary proofs, witness statements, and rules of law to determine which litigant should prevail in the end. This is not to say that trial judges do not have any room to maneuver. The way in which they apply the facts they "find" and how they apply these facts to the relevant law does allow a certain amount of "wiggle room" (Songer and Sheehan 1990).

Appellate court judges, on the other hand, are constrained by the record that is presented on appeal (Coffin 1994). These judges are faced with macro level indicators from the onset such as determining the relevant precedent that should be applied or what the policy implications will be from any given case. Given that for appellate judges the emphasis is not on differentiating among facts but only reviewing them, appellate court judges may be in a better position to act as policy makers. However, it would be incorrect to characterize decision making at this level from being completely void of any

consideration of the law. Appellate court judges must at all times be attentive to the proper and relevant precedent to be applied for each type of issue that is before them. Thus, while it is probable that the law is a notable consideration to both types of judges, it is perhaps not as pertinent to the appellate court judge who has more independent discretion in decision making. It appears that the decision making process could vary depending on the whether the judge is in a trial or appellate court role. In addition, it may be incorrect to assume that a theory that seems to explain decision making at the Supreme Court fairly well will necessarily be as appropriate for all levels of the judiciary.

Nonetheless, we should not completely dismiss the similarities between judges at these two levels of the courts. Both types of judges are appointed for political and policy reasons (Rowland and Carp 1996; O'Brien 1988). Ninety-seven percent of both Reagan and Roosevelt's appointees to the federal bench were from their same political party, and an overall average of 95 percent of all appointees are from the same party as the president who appoints them (O'Brien 1988, 32). It is obvious that presidents believe appointing judges of the same party as their own to the bench will produce policy benefits. Thus presidents must assume that judges with similar policy preferences to their own will exercise those preferences when making judicial decisions.

Further, trial and appellate judges are no less immune to cognitive bias than any other decision makers. The location in which a judge is raised, educated and ultimately seated on the bench shapes the cultural and political milieu surrounding the decision making environment. Policy decisions will reveal the local values and attitudes that judges bring with them from the time they first enter into the judiciary (Carp and Stidham 1991).

A judge's view of his own proper role will also influence how much these biases enter into the decision making process. Judges who view their role as one of a policy maker or as one of an arbiter will be more likely to succumb to those inclinations (Carp and Stidham 1991). Attitudinal biases are therefore shaped and modified by the environment that has surrounded the judge throughout his or her socialization and professional development (Kemerer 1991; Carp and Wheeler 1972).

Thus, are there significant differences between these types of judges or can we conclude that they operate using similar cognitive processes? It appears there are theoretically compelling arguments on both sides of the question. This research will attempt to address some of these unanswered propositions. While I hypothesize that all judges are swayed by the same factors, further analysis will tell us if there are significant differences in the magnitude of these factors' influence for the two kinds of judges.

Having established the question of interest, it is important to find the most appropriate issue area in which to evaluate it. First, it is important to control for the underlying law by focusing on a specific issue domain. One particular civil rights area - vote dilution, which is the process whereby election laws or practices diminish the voting strength of at least one other group- is appropriate for several reasons. Studying vote dilution offers unique advantages because it allows us to examine the behavior of both trial and appellate court judges together at the same level of the courts. In cases of statewide importance (voting rights cases qualify in many instances) three judge panels consisting of two district court judges and one appellate court judge are convened. Since these cases are appealed directly to the Supreme Court, both types of judges are officially acting in a

trial court capacity. In addition, vote dilution cases are unique due to the involvement of the Department of Justice. With the passage of the Voting Rights Act of 1965, the Department was given statutory authority that it had previously lacked to intervene in vote dilution cases. To my knowledge no research has been conducted to study the effects of this new authority in relation to the judicial decision making process.

In the following sections, I develop an integrated theory of judicial decision making that incorporates legal and extralegal aspects that have been found by scholars in other judicial research to be important for studying both types of judges (George and Epstein 1992; Brace and Hall 1993, 1995; Hall 1992; Hall and Brace 1992; Songer and Haire 1992). The debates in the literature surrounding this subject will be outlined and assessed. I also address what has been missed previously and discuss where the research in this area should next proceed. Chapter 3 discusses the data necessary to evaluate the research and lays out the individual hypotheses derived from the theory. Chapter 4 reviews and explains the results found in the analysis and my conclusions. I use probit regression to estimate the probability that any given judge will decide to protect or expand voting rights. After evaluating the overall model, I discuss the similarities and differences between the findings for appellate and district court judges and evaluate whether or not they are of any consequence. Chapter five provides a summary of the results and discuss what I found in comparison to the related work of others. Finally, a discussion of how the research conducted here will add to our knowledge and improve and contribute to the discipline is provided.

There is an immense need for research in this area so that we may expand our

knowledge of the judicial decision making process. It is important that scholars are careful when applying what we have learned from studies at other levels of the courts to the federal district courts. Trial courts are distinct from appellate courts in the process in which they take cases and evaluate them. The goal of this research is to provide insight into the decision making process both at the trial and appellate court level, and evaluate the findings in light of what has been accomplished in previous literature.

CHAPTER II

THEORY AND LITERATURE REVIEW

Studies of the U.S. court system have focused extraordinary attention on the role of the judicial decision maker. Article III of the Constitution is fairly vague and the Founding Fathers left many developmental aspects of the judiciary under Congressional control. Although jurisdiction for the Supreme Court was specifically provided, the role the judiciary should take and how they should go about interpreting the law was ambiguous. What should be the role of these people that ultimately rule on the most important issues of our time? Should judges be neutral arbiters of the law or is it their duty to consider the situation at the present time in interpretation? Justice Black, one of the great strict constructionist of the Court, believed that the interpretation of the Constitution should and can be straightforward.

My view is, without deviation, without exception, without any ifs, buts, or whereas, that freedom of speech means that government shall not do anything to people, or, in the words of the Magna Carta, move against people, either for the views they have or the views they express or the words they speak or write. Some people would have you believe that this is a very radical position, and maybe it is. But all I am doing is following what to me is the clear wording of the First Amendment that "Congress shall make no law....abridging the freedom of speech, or of the press. (Quoted in O'Brien 1995).

However, it only takes a cursory examination of decisions handed down from the Court to realize that in reality not even Justice Black has been able to adhere to such a literal interpretation of the law. The law is gray and judges in their decision making are seldom able to draw distinct lines in interpretation.

Early legal scholars saw the role of the judge in theory and practice to be one of a neutral arbiter that strictly interpreted the law and applied precedent (see Horwitz 1987; Coffin 1994; Johnson 1987; O'Neill 1981). In theory this may be the role that seems the most desirable, but there are reasons to question whether or not judges decide cases as neutral arbiters. While the role of the judiciary may not be agreed upon it may be even more difficult to evaluate whether or not federal judges fulfill that role. How judges actually reach conclusions within decisions may be as difficult to ascertain as deciding how we as citizens believe judges should be making decisions.

The behavioral revolution inquired into whether decision makers process information according to a strict interpretation of the law (Pritchett 1948; Murphy 1964; Schubert 1965, 1974; Rohde and Spaeth 1976; Segal and Spaeth 1993). Critics questioned the ability of decision makers to bring entirely impartial attitudes to the cognitive process. Herman Pritchett and other early behavioralist saw patterns in the Supreme Court that could not be easily explained by the traditional view of a judge as neutral arbiter (Pritchett 1948). His study of decision making recognized that judges decided cases along liberal and conservative lines. These studies opened new avenues of thought that possibly, judges while interpreting the law, may do so in accordance with their own policy preferences. The field of political science now began to test alternative propositions about the decisional processes involved in judicial decision making.

The search for answers about what it is that drives decision making has extended to all types of external influences such as the litigant's status (Rowland and Todd 1991; Ulmer and Thomson 1981; Wittman 1988), case characteristics (Lloyd 1995; Hall and

Brace 1994; Brace and Hall 1993; George and Epstein 1992), and key actors such as the Supreme Court bar and the Solicitor General (McGuire 1993; Segal 1990, 1988; Segal and Reedy 1988). The key questions focus on whether these external attitudes and attributes of particular judges really enter into the decision making process. Some recent scholars have answered that question with a definitive yes (Segal and Spaeth 1993; Rohde and Spaeth 1976; Gibson 1978; Songer and Davis 1991). The court system was created with an inherent insular nature so that judges would not be held accountable to the whims of the electorate so they could remain truly neutral. However, creating the court system in this way also made neutrality easier to avoid (Carp and Wheeler 1972; Carp and Stidham 1991). Federal court judges are appointed for life with no threat of reduction of salary or removal from office due to job performance. They are therefore, unaccountable to the public or to the president who appointed them to their position. They may or may not decide cases in an impartial manner and still be free from sanction. What then would keep judges who hold the most unaccountable position of the three branches of government from interpreting the Constitution as each individual sees fit?

Perhaps both models have something to offer the field and in fact substantially overlap in reality. Judges do appear to come close to impartiality in many instances. Judges are constrained by precedent and the relevant legal standards in the case (Howard 1981). One factor that may contribute to how closely lower court judges follow the legal reasoning on a certain issue is whether the Supreme Court has provided a clear standard to follow. In instances in which the Court has left a clear-cut interpretation of the law, research has shown that the lower courts are more likely to decide cases in a congruent

and responsive manner to the mandates of the Supreme Court (Songer, Segal , and Cameron 1994; Songer and Haire 1992). Segal (1984), using fact pattern analysis on search and seizure cases, estimated whether the presence of certain facts led judges to resolve disputes based on these facts, regardless of ideology. He found that in the presence of some facts judges did indeed decide cases in very similar manners.

Indeed, because judges are human decision makers subject to bias, it appears in actuality that what we see is judicial decision making that makes use of some combination of both theories. In the past decade, a number of scholars have found that an integrated process approach does more to explain and predict the process involved in decision making than the extralegal or legal theories can do alone (George and Epstein 1992; Brace and Hall 1993, 1995; Hall 1992; Songer and Haire 1992). It becomes important then to decipher which extraneous elements have the most influence on the decision making process and to examine what factors are inherent in the decision maker that allows him or her to deviate from deciding issues according to the law and precedent.

Further, judges are also constrained by the judicial hierarchy. They are hindered by precedent, and if they overstep the legal boundaries they run the risk of being sanctioned by an appellate court overturning their decision. The executive and legislature can decide to simply not listen to the mandates of the Court or they can create legislation that achieves their goal and at the same time fits within the Court's interpretation of the Constitution. While this may be damaging to the prestige of the Court, a quick glance throughout history seems to indicate that for the most part decisions handed down by the courts have usually been adhered to by the other two branches. As Hamilton argued in

Federalist no. 78 the courts have neither “the power of the purse nor the sword, only judgment.” Respect for the judiciary’s role in the American system seems to be one answer to the reason the courts have been so successful in asserting authority through their opinions.

Lower level courts are keenly aware of the possibility of being overruled by the higher courts. There are several reasons that being reversed by a higher court has important implications for the judge and the court system itself. First, when a judgment is reversed, the higher court is telling the lower court judge that they have interpreted the legal precedent and facts incorrectly. Naturally, this may affect the confidence of the judge, but it also is possible that the case will be remanded and the judge will again have deal with the same issues. More time will be expended that could have been avoided if the judge had decided the case in accordance with how the higher court would have decided.

Second, it is possible that lower court judges engage in judicial deference to a higher authority in order to maintain a good record. If a judge desires to be elevated to a higher court, he will be interested in having of a record that appears to show he is capable and competent (Songer and Haire 1992; Songer, Segal, and Cameron 1994). Deciding cases in congruence with the higher courts exhibits proficiency and expertise on the behalf of the judge. The president considers a judge’s judicial record as well as his ideology when considering who is deserving of elevation to a more prestigious court or position (Songer and Davis 1990).

In a similar manner, government entities, although limited in their ability to sanction the courts, can have a direct influence on judicial behavior (Davidson and

Grofman 1994; Songer and Sheehan 1992, Rowland and Todd 1991; Caldeira and Wright 1988). Since Murphy's, *Elements of Judicial Strategy* (1965), scholars have come to accept the fact that the other branches of government can shape judicial policy. The executive branch has received considerable scholarly attention (Songer and Sheehan 1992; Caldeira and Wright 1988; O'Brien 1988; Songer and Davis 1990). The Solicitor General, due in large part to being in an "upper dog" role and having superior resources readily available, has been able to dominate and influence the judicial process (Caldeira 1990; Perry 1991). Because the Supreme Court accepts 90% of the cases that the federal government brings before it, the Solicitor General plays a large role in setting the Court's agenda. Further, since the Solicitor General is a repeat player, the person occupying this position has more of an opportunity to play for rules (i.e., argue to have laws and standards created that will in turn benefit them in the future) and is therefore, instrumental in shaping the policies created by the Court.

Much of the district court literature suggests the power of the presidency in shaping the judiciary. The executive when making his recommendations to the judiciary committee has carefully delved into the background of the candidate and 70-90% of the time he selects judges that have similar political preferences to his own (O'Brien 1988; Rowland and Todd 1991; Songer and Davis 1990). For example, studies show that Reagan and other Republican judges were less supportive of disadvantaged minority and civil rights/liberties claims than were Democrats (Stidham and Carp 1987). Democrat judges were also more liberal with regard to support for criminal defendants (Rowland, Carp and Stidham 1984; Rowland, Songer and Carp 1988), labor cases

(Stidham and Carp 1989), economic policies (Rowland and Carp 1983), and economic regulation (Stidham and Carp 1989). The Nixon and Reagan presidencies were well known for emphasizing 'law and order' and conservatism as a baseline guide for their short lists (Rowland and Todd 1991). Studies on the Supreme Court have found substantial support for this phenomenon (Tate 1981; Tate and Handberg 1991). Even though we see a correlation between judicial appointments and partisanship, it may not be as relevant on the federal district courts because the constrained environment in which they work leaves these judges with a smaller space in which to express their preferences (Cameron, Segal and Songer 1993).

Further, the Department of Justice (DOJ), especially with the passage of the Voting Rights Act of 1965, has tremendous influence over the judiciary (Davidson and Grofman 1994). The DOJ, under Section 5 of the Act, had been given preclearance authority over any and all changes made to voting precincts and methods, and the Act codified the Attorney General's standing as a party separate from plaintiffs under Section 2. This new statutory authority, coupled with the success that government entities enjoy when they are judicial participants, would make a powerful impression on the judicial decision maker. Judges faced with resolving a voting rights case would certainly consider the possible ramifications (e.g., increased regulation and intervention by DOJ officers in the actual process) if they were to defy the mandates of the Department (Davidson and Grofman 1994 Grofman, Handley, and Niemi 1992).

The individual litigants in each case are players that also influence the judiciary and in Voting Rights cases are often minorities. Although the Voting Rights Act of 1965

provided encouragement and support from the DOJ, it would appear that minority litigants would still be at risk (Grofman and Davidson 1992; Giles and Walker 1975; Grofman, Handley, and Niemi 1992). Many regions were slow to comply with the new mandates of the Voting Rights Act and in many instances minorities were forced to settle representation disputes on a case-by-case basis. The election method itself provides an important link to the amount of perceived discrimination. Although reapportionment in general changes the political fortunes of a number of legislators, by its very nature at-large elections are often considered more discriminatory than other electoral methods. Thus, minorities turned from the all Caucasian legislature that created these types of obstacles to the all Caucasian courts. Minorities were in search of remedies that they were unlikely to find in the courts for the same reasons they were unavailable in the legislature.

When the Court initially spoke to this issue, it contradicted itself three times within a thirteen-year period on what the criteria should be when establishing a voting district (*City of Mobile v Bolden* 1980; *Thronburg v Gingles* 1986; *Shaw v Reno* 1993). Individual judges without clear mandates from the Supreme Court on the Constitutionality of certain types of voting mechanisms are freer to make decisions as they see appropriate. It would not be a surprise then to learn that racial bias on the part of judges was present in the decision making process, especially in Southern regions.

Is judicial decision making bias more likely to be present in certain regions and with particular types of judges? While much of the federal district court literature has remained silent on the discussion of background attributes, much of it has addressed

one aspect: region. Some of the recent literature has suggested that as a distinct political culture, judges from Southern states are more likely to defer to governments over minority rights claims (Carp and Rowland 1983).¹ Rowland, Carp and Stidham (1983) also find that, regardless of the nominating president's party, Southern judges were much less supportive of criminal defendants overall than were other judges from other regions. In addition, Stidham and Carp (1987) find similar results for disadvantaged minorities as well as civil rights and liberties claimants. Lloyd (1995), however, finds that judges from the South were less likely to strike down a reapportionment plan than were other judges.² This is an important finding in relation to this research because reapportionment cases and the fate of minority litigants are the focus here as well.

Although most judges sit on courts in the region from which they originate, a number of judges may have changed geographical areas during their legal and judicial career. Present geography is another social attribute of importance for two reasons. First, judges may consider themselves as representatives of the people and culture in the area in which they live. Second, and more important, the political culture of certain areas may actually indoctrinate newcomers into certain social beliefs with regard

¹In the analysis here we must be mindful that in many instances the government is arguing on behalf of minority litigants. So in deferring to the government judges are supporting minority rights. Therefore, considering what we know about government litigants and Southern attitudes toward minorities, it is probable that these two aspects interact with each other during decision making.

² This finding could be due to the argument referred to above about the involvement of the DOJ into the playing field as a litigant.

to minority representation (Hall 1995).

The literature reveals some interesting findings in the quest to determine how judicial decisions are made. Support has been found for legal and extralegal explanations. Institutional and legal factors, a judge's personal attributes, and the status of the litigant all combine to influence the decision making process. It appears from the review of the literature that all of these factors are important at some level and would lead us to conclude that the best explanation must be able to account for the influence of each one. Only after we agree upon how the process of decision making operates, can we decide if that process generates a legitimate end.

Further, much of what we do know has come from studies concentrating on the Supreme Court and to a lesser degree the appellate courts. Research has been virtually silent on how these findings may apply to the trial courts and what differences and similarities we might expect to find. Therefore, my research on the trial courts will add to our knowledge of the process and provide us with knowledge in these virtually uncharted areas.

CHAPTER III

BUILDING A MODEL OF JUDICIAL DECISION MAKING

If the substantive doctrine within a case influences judicial outcomes, it is important to control for the underlying law by studying one substantive area (Lloyd 1995; George and Epstein 1992; Songer and Haire 1992). Definite problems arise when comparing research across policy areas and making broad claims without accounting for the differences between substantive legal domains. Aggregating issue areas into one civil rights category could lead scholars to misleading conclusions. When evaluating cases, lower court judges invoke the proper case law in each substantive area and if researchers do the same by disaggregating these legal issues we are apt to draw more valid conclusions. The present study controls for the underlying law by examining one civil rights policy area: vote dilution.

Before explaining the benefits to using vote dilution cases for the analysis, it is important to provide a working definition due to the distinction between disenfranchisement and dilution. Disenfranchisement is the actual denial of access to the voting ballots (for example, intimidating voters at the polls, imposing restrictions to registration, stuffing the ballot box, or miscounting election returns (Davidson and Grofman 1994)). Dilution, on the other hand, can occur even when voters are able to successfully arrive and vote at the polling location and can be assured that the ballots are being tallied correctly (Davidson and Grofman 1994).

Vote dilution is the process whereby election laws or practices, either singly or in concert, combine with systematic bloc voting among an identifiable group to diminish the voting strength of at least one other group. The idea is that one group, voting cohesively for its preferred candidate, is systematically outvoted by a larger group that is also cohesive . . . and further ethnic or racial vote dilution takes place when a majority of voters, by bloc voting for its candidate in a series of elections, systematically prevents an ethnic minority from election most or all of its preferred candidates----candidates who will probably be members of the minority group---in an election system which there is a feasible alternative (Davidson and Grofman 1994, 22).

Several voting practices such as at-large elections (multi-member districts) and gerrymandering (redistricting with the intent to disadvantage a particular group) have been found to effectively dilute minority and rural area voting strength. Many of the cases analyzed here address such practices.

Studying vote dilution offers unique advantages because it allows us to examine the behavior of both trial and appellate court judges. In cases of statewide importance three judge panels are convened which consist of two district court judges and one appellate court judge.³ Three judge panels comprise 53% of all the vote dilution cases analyzed in this study, providing an ample number of circuit judges with whom to make a comparison against their lower court counterparts. Lloyd (1995) argues in his vote dilution analysis that there should be no difference in the decisional processes between the two types of judges. I also assume the null hypothesis, but recognize the possibility that the differing role orientations of the two types of judges may produce outcomes that are

³ Panels are convened in a limited number of cases. The plaintiff must: 1) challenge a state statute; 2) the statute must apply generally throughout the state; 3) the defendant must be a state officer; 4) injunctive relief must be at issue; and 5) a substantial federal constitutional issue must be raised (*Hinton v. Threet* (1968); *Liverright v. Joint Committee of General Assembly* (1968)). Whether a case merits a three-judge panel is within the district judge's discretion and is subject to appellate review (see Perry 1991, 305-7).

the result of distinct decisional processes operating at each different level of the courts.

Vote dilution cases are also an appropriate area of research because of the unique involvement of the Department of Justice. Prior to the passage of the Voting Rights Act of 1965, the Supreme Court encouraged the government, through the language in individual cases, to support the elimination of discrimination (Grofman and Davidson 1994). In the absence of strong federal laws intervention was difficult and sporadic. After the passage of the 1965 Act, which provided the DOJ with the legal authority to oversee and approve any changes in state and local voting methods (Grofman and Davidson 1994), the Department of Justice's involvement in enforcing voting rights was increased and the ability of the federal courts to protect voting rights was amplified.

Unfortunately, state and municipal governments did not give up so easily in protecting the status quo and enacted second order obstacles such as at-large voting schemes, reapportioning boundary lines, and annexing adjacent geographic areas that were predominantly white (Grofman, Handley, and Niemi 1992, 23). These barriers were more difficult to implement than the disenfranchisement barriers of previous times, but were successful in diluting minority voting strength. The responsibility of ordering compliance with the provisions of the Act was left to the discretion of the courts. As a result, the federal district courts once again found themselves in the thick of the voting rights controversy.

Data Selection

Voting Rights cases were selected from a Westlaw search (an electronic database

of all published judicial decision) which found 1689 cases from August 6, 1965-- the effective date of the Voting Rights Act-- to June 23, 1993-- the effective date of *Shaw V. Reno* (1993). Cases were read to locate instances that considered reapportionment, multi-member districts, or annexation devices. Cases were discarded that included challenges to voter eligibility and ballot access and others that simply mentioned voting rights in passing.⁴ Additionally, only published opinions are used here, first, because unpublished opinions are so difficult to track and then code for specific details and reasoning. Secondly, only published opinions are used to form *stare decisis*, hence, they have the greatest policy impact. While the exclusion of unpublished opinions may raise concerns about bias in the data, sources have indicated (e.g., Lloyd 1995; McCrary 1997) that we should not expect to find many differences when these cases are included.⁵

Nonetheless, with these stringent criteria 296 of the original cases were used amounting to

⁴ Arguably these case types should be included, however, the legal claims vary widely and are highly idiosyncratic. These cases ranged from attorney's fees, inmate voting requests, and student residency requirements, to improper convention procedures, challenges to electoral delegations, and ballot listings. As is the case with most judicial research, I limited the study to cases that have received a majority of the Supreme Court's attention and that have been the most salient of the vote dilution cases (Davidson and Grofman 1994 (eds.); Grofman and Davidson (eds.) 1990; Grofman, Handley, and Niemi 1992).

⁵ Using electronic sources means that both published and unpublished opinions can be used, and trial court research has been criticized for relying exclusively on published opinions. Other research has found differences in the circuit courts when published and unpublished opinions are compared (Songer and Sheehan 1993). While concerns about the data are noted, the resources for obtaining unpublished opinions would prevent the research from being done at all. Lloyd (1995) argues that using only published opinions is valid because the issues addressed are highly salient and thus more likely to be published. Peyton McCrary at the Voting Rights Division of the Justice Department does not believe that judicial outcomes would vary from published to unpublished decisions based on his experience at the Division and as an expert witness in voting rights cases. Future research might wish to examine this.

624 individual judges' decisions.⁶

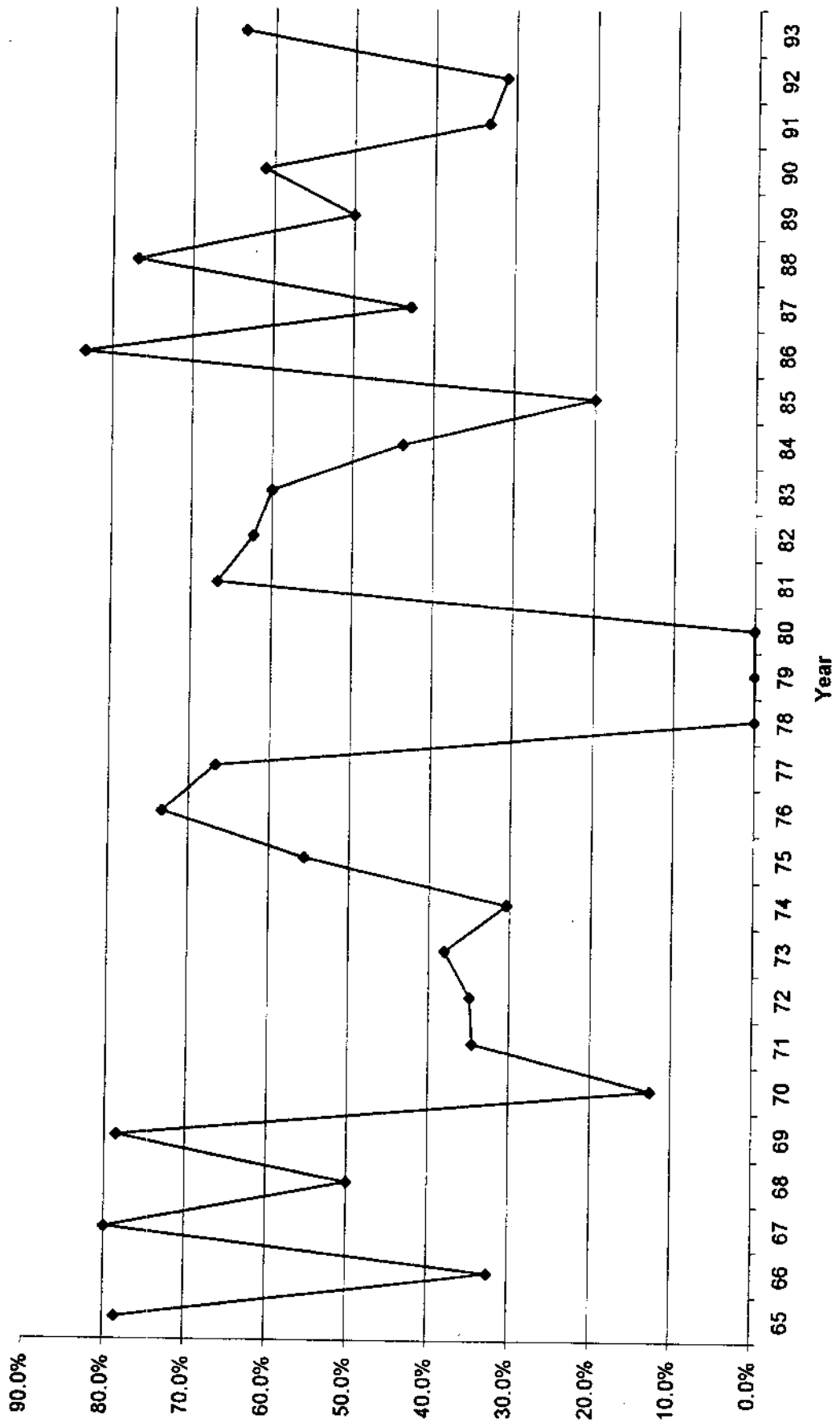
Hypotheses and Operationalization

Before discussing the individual hypotheses it is important to detail the measurement of the dichotomous dependent variable. The variable captures the probability that any judge will decide a case to expand or protect voting rights. Most of the time plaintiffs are alleging that some method has been employed that encourages vote dilution. Essentially, the claims allege that a purposeful discriminatory action has been used to discourage participation. When judges decide in favor of the plaintiff they are essentially providing a verdict that is friendly to these groups and encourages the protection of voting rights. Over the twenty-eight year period plaintiffs have won (47.2%) and lost (52.8%) at about the same rate. Chart 1 reveals the annual percentage of wins across time and indicates that the consistency in decision making did vary over time. The dependent variable is coded 1 if the judge has decided in favor of the plaintiff and protected voting rights; and 0 otherwise.

The one exception to this coding scheme is if a city, county, or state government entity challenges the authority of the DOJ to intervene in a suit. In these cases a win would *not* indicate an expansion or protection of voting rights. When lower level governments sue the DOJ, they do so because the Department does not believe that the plan in contention sufficiently protects voting rights, and therefore, the DOJ has subsequently

⁶ Due to some judges recusing themselves and the instances in which a case only involved one or two judge panels, the total number of cases (296) multiplied by three will not equal the total number of observations (642).

Annual Percentage Wins



Series1

CHART 1

denied the lower level government its preclearance request. In these cases, a plaintiff win is coded 0, and if the defendant (federal government) wins, indicating consistency with aggressive voting rights enforcement, the case is coded as a 1. We now turn to the specific hypotheses and the operationalization of the extralegal and legal factors that form an integrated process model of judicial decision making.

Department of Justice Intervention (Litigant Status)

The Department of Justice was given authority in Section 5 of the Voting Rights Act of 1965 to oversee the approval of any changes in voting methods. Originally, this section applied to eight of the Southern states, but has, over time, been applied to twenty-two of the states, subjecting states in all regions at one time or another to the policies of an executive branch authority (Davidson and Grofman 1994). First, the 1965 Act gave the DOJ the ability to legally intervene in vote dilution cases on behalf of plaintiffs. Second, the Department can require that any changes made to the current form of election method within a district (at-large, annexation, or reapportionment) be submitted to the Department of Justice and be subject to preclearance. Preclearance refers to the requirement that any changes in voting methods within a district must not only be submitted in writing to the DOJ, but also that the Department must approve these changes (Davidson and Grofman 1993). Lastly, the DOJ is expected to defend its decisions when it choose to intervene (Davidson and Grofman 1994). Section 5 of the Voting Rights Act details the criteria a state or municipality must meet for modifying a voting practice and explains the rules involving preclearance.

When the national government intervenes as the plaintiff in the appellate and trial courts, the decision overwhelmingly favors that government (Songer and Sheehan 1993; Rowland and Todd 1991; Caldeira and Wright 1988) Therefore, there are important ramifications for the states that fall under the Section 5 requirements. These states and their local governments and courts, are on notice that they are being closely scrutinized by a superior authority. Judges, realizing that they are being watched by the DOJ and are subject to preclearance rules, may temper their behavior and more willingly favor the expansion of voting rights.

Several studies have indicated that the “haves” of society come out on top in the judicial arena as compared to the “have-nots,” (Galanter 1974, Songer and Sheehan 1993). Galanter suggests that the “haves” win due to their “superior material resources and because a number of advantages accrue to them as a result of their ‘repeat player’ status” (quoted Songer and Sheehan 1993, 235). Superior resources allow litigants to hire the best attorneys, employ larger staffs to conduct research, and enable these litigants to bear the expensive cost of prolonged court involvement. Further, “haves” enjoy other benefits from repeat litigation, such as an intimate understanding of the law on certain issues, increased courtroom experience, rules decided to their benefit that can be taken advantage of in later litigation, and policy formulation tactics (Galanter 1974). Songer and Sheehan (1993) have found that on the appellate court “haves” or “upper dogs” also enjoy a separate advantage. Government litigants are more likely than individuals and businesses to prevail regardless of whether they are involved as defendant or plaintiff. Therefore, the research seems to indicate that at all levels of the judiciary, repeat players

with superior litigation resources reap the most benefits.

The role of the Solicitor General in litigation has also played an important part in decision making and the office's occupant has been referred to as the tenth justice on the Court (Perry 1991). The Solicitor General acts as an advocate for the United States when he either argues to the Court the need to hear a certain case or files an amicus brief on the government's behalf. Thus, the Solicitor General plays a role in agenda setting for the Court (Perry 1991). Not only are a majority of the cases in which the Solicitor General indicates a government interest heard by the Court, but most of those cases are also decided in favor of the litigant the government supports. The literature certainly seems to suggest that certain characteristics of the litigant can influence the result of a dispute.

Most research has established the government's role as one of the "haves" and a "repeat player", but such studies do not specify whether a statutory source exists for intervention (Songer and Sheehan 1993; Rowland and Todd 1991; Sheehan 1991). Judges, knowing the success and influence the government has enjoyed in the role of an "upper dog", may be swayed by this factor from the beginning. The reality that the federal government usually wins in a dispute is a factor that must be considered when assessing decision making. When coupled with the fact that the DOJ and the Solicitor General also now have the legal authority to intervene, the DOJ's influence may be even greater on the judge's decision making process.

Research has, for the most part, assumed federal involvement to be an extralegal variable (Songer and Sheehan 1993; Rowland and Todd 1991; Sheehan 1991), however it is questionable whether in the voting rights context this specification is appropriate. My

specification of federal involvement as a legal variable is supported by the fact that the Voting Rights section of the Justice Department chooses strategically--based on legal considerations--when deciding which cases merit the allocation of scarce resources (Grofman and Davidson 1994). Judges may defer to the Justice Department's decision making and legal concerns not only because of its preferred status but also because of its statutory authority.

H1: If the Department of Justice intervenes on behalf of the plaintiff, the court is more likely to protect voting rights.

H2: If the Department of Justice intervenes on behalf of the defendant, the court is less likely to protect voting rights.

At first it appears there is no need to include a test for both of these hypotheses in the model. However, the DOJ did not intervene in all voting rights cases in the data set. The department acted as both an advocate and a defendant and we need to address how it fares in both of these roles. It is difficult to assert with certainty whether the DOJ is successful because the statutory framework inherently favors judicial deference to the Justice Department (a legal explanation), or if the government wins due to the conventional wisdom that it has an "upper dog" status (an extralegal explanation). Further, it is unnecessary for the present study to clarify whether federal involvement is actually a legal or extralegal variable because an integrated process model allows either proposition. I merely suggest that it is probable that these factors are important in explaining why there is judicial deference to the Justice Department.

It is also crucial to understand that there is a distinction between the roles that the

Department takes on as a plaintiff and as defendant. When the DOJ is suing on behalf of individual plaintiffs, it is using its legal authority, as granted in the Civil Rights Act of 1965, to do so. It is their job and obligation, due to the new preclearance requirements, to intervene in instances in which vote dilution tactics may be employed. However, when the Department is being sued it is defending a previous decision made under its authority. In one instance it has taken the initiative and in the other they are in return being challenged to justify the use of its legal authority. Accordingly, cases were coded 1 if the federal government intervened as a plaintiff or defendant, and 0 otherwise. As such, I anticipate that the direction of the coefficient will be positive when DOJ is the plaintiff and negative when they are involved as the defendant.

Signal

One of the interesting questions surrounding the lower courts is how much deference the courts accord Supreme Court precedent. Principle-agent theory requires, in the simplest form, that two actors interact with each other in an authority-based environment (Songer, Segal, and Cameron 1994). One actor, the principal, has authority over the other, the agent, whom is expected to carry out the commands of the principle. Judicial decision making studies have found the Supreme Court is a principal that instructs the appeals and lower federal court actors. Songer, Segal, and Cameron (1994) examined the extent to which Court of Appeals judges either follow their own policy preferences or defer to the preferences expressed by the Supreme Court. Using fact pattern analysis in search and seizure cases and the principal agent model, the authors break decision making

down by assessing how often appeals court judges are either congruent or responsive to the decisions of the Supreme Court. Congruence refers to the extent to which the lower court conforms to the mandates of the high court, and responsiveness refers to the degree to which the lower court changes its behavior to match the changing will of the principal. They find overwhelmingly that the appeals court is both congruent and responsive, to the mandates of the Supreme Court.

Songer and Haire (1992) find in obscenity cases that changing Supreme Court precedent does have substantial impact on the decision making of appeals court judges. The authors chose a time period in which the Supreme Court appeared to experience a shift in ideology and civil rights decisions became more conservative. The appellate courts responded to these changes and began to render decisions congruent with the Court's changing preferences. Appellate court judges do appear to keep a watchful eye on the policy making of the Supreme Court and to be responding to it accordingly. While the above studies shed light on how appeals court judges react to Supreme Court mandates, it is inappropriate due to differences in their role orientations, to automatically assume that trial court judges react in the same ways.

While there is a fair amount of literature that explores the differences between appellate court decision making and the Supreme Court's decisional process (Songer and Sheehan 1990; Songer, Segal, and Cameron 1994), little research has compared the three levels of the judiciary to each other. Baum (1980) examined compliance at all three levels of the judiciary and found that while the court of appeals experiences high levels of compliance from the lower trial courts, this is not true for the relationship between the

Supreme Court and the trial courts. This finding perhaps indicates that the further in the judicial hierarchy the principle is from the agent, there will be less influence exercised on the agent. However, Baum does go on to assert “that although the court of appeals gets a good deal of what it wants from subordinate policy-makers, it is considerably less than a uniform adoption of its policies” (1980, 224). Thus, Baum is indicating that the level of compliance could possibly be conditional and situational.

To the contrary, Gruhl (1980) and Johnson (1987) both look at the relationship between the trial, the appellate and the Supreme Court and find evidence to suggest high compliance for both of the lower courts. However, while Gruhl finds no difference in the strength of compliance to the Supreme Court for the court of appeals and the district courts, Johnson finds that the district courts are more likely to follow Supreme Court precedent.

Federal courts of appeal are not more likely than federal district courts to follow a Supreme Court’s holding or to decide in a manner consistent with the policy thrust of the Court’s decision. In fact, courts of appeal are even less likely than district courts to follow the high court’s reasoning (Johnson 1987, 339).

It is apparent that the literature has not reached a consensus on the issue of compliance. It could be that different conclusions have been reached because of differences in coding techniques for Supreme Court signals, or the divergences may be a function of the differences in issue and subject matter⁷. For example, lower courts may follow *stare*

⁷Studies on principle-agent modeling have utilized different criteria and measures to arrive at what the researchers believe to be the appropriate signal. Some studies use one particular signal, others use different signals as the Court changes policy over time, and some just choose landmark cases and record the reaction of the targeted agent court. Further, when we are discussing different issue areas, it is hard to compare compliance findings because lower courts may react differently depending upon the issue.

decisis in civil rights cases, but not in economic cases.

One study has done a similar but much more simplified analysis of compliance using the same issue area as is found in this thesis. Lloyd's (1996) article analyzes the reaction of mixed panel courts (one appellate judge and two district judges) to cues sent by the Supreme Court. Lloyd combined extralegal and legal variables in an analysis of three-judge panel reapportionment cases from 1964 to 1983 and used one Supreme Court indicator *Swann v. Adams (1967)* to assess the role of precedent. He found that decision makers were less likely to vote against reapportionment cases after *Swann*. Lloyd indicates that this may be due to the stricter standards that judges were held to in respect to population before the *Swann* decision. The precedent on this issue was fairly stringent until the *Swann* decision which radically lowered those barriers.

Lloyd and others (Johnson 1987; Gruhl 1980) argue that we should not find differences between appellate and district court decision makers. An appellate court judge may indeed pay closer attention to Supreme Court signals but lower courts have no compelling reason to fail to heed the Court the same deference. For these reasons, Lloyd assumes no differences between the two types of decision makers.

Lloyd's work, while instrumental as a first attempt at breaking into the area of voting rights decisions at the lower district court level, has a few problems. First, the use of only the *Swann* decision as a point of reference for precedent is misleading. Due to the changing signals the Court sent over the entire period from 1965-1993, it would be inappropriate to limit the study of the lower courts' reaction to one early case (1967). The impact of the change in the Court's precedent on lower court decision making cannot be

captured accurately by looking at only one case point in time. Therefore, I measure whether lower courts conform to the twenty-seven different signals the Supreme Court decided during Lloyd's time frame. In addition, I add to Lloyd's analysis of reapportionment cases two other case types: multi-member districts and annexation disputes for a total of 41 signals. Thus, my research not only expands the time period in question by about ten years, but also examines the whole of voting rights cases in more depth.

H3: Judges are more likely to protect voting rights, if the latest relevant Supreme Court signal has protected or expanded these rights.

In order to assess whether judges conform to the wishes of the Court, voting rights cases in Spaeth's ICPSR Supreme Court data set were precision matched with the lower court cases according to the four levels of government (federal, state, city, or county) and the substantive basis of the dispute (at-large, annexation or reapportionment disputes).⁸ A case that involved a city that was being sued because litigants alleged that the at-large voting mechanism in that district was discriminatory was matched with the most recent Supreme Court case that dealt with the same facts. The Supreme Court cases are coded in the Spaeth data set as either pro-civil rights, anti civil rights, or unclear if it could not be determined. For some of the early cases the Supreme Court's signal was unclear because the Court had not decided a case addressing the substance of the

⁸ Only plenary decisions were used. Summary decisions and per curiam opinions were not used because there was not consistent information to carry out the precision matching. Throughout the 28 years examined, the Supreme Court issued 41 plenary decisions with full opinions that addressed the legality of redistricting, multi-member plans, and geographic annexations.

complaint, or the level of government did not match the case in the study. As such, the coding reflects this ambiguous signal. Cases were coded 1 if the decision was pro-civil rights, -1 if the decision was anti-civil rights, or 0 if the signal was unclear because no case had been decided that was on this point. I expect the coefficient to be in the positive direction indicating that there is an increase in the probability of a pro-civil rights decision if the most recent Supreme Court signal was pro-civil rights.

Minority Status

Minority success in the Supreme Court has changed over time, but in recent decades the Court has protected minority rights more than any other political institution (Gibson and Caldeira 1992). Through the early 1960's, the Warren Court was one of the only avenues of hope open to minorities for relief from political grievances. The Supreme Court interpreted most of the ground breaking legislation created by Congress to protect minority rights as Constitutional which overturned previous lower court decisions which were hostile to expanding minority civil rights or liberties. Historic lower court resistance to change on civil rights issues indicated that the Supreme Court would be responsible for remedying disparities (Davidson and Grofman 1992). However, beginning with the onset of the Burger Court, minorities and liberal constituents found little comfort even in the decisions emerging from the Supreme Court (Gibson and Caldeira 1992).

Research on civil liberties and the federal district courts, while acknowledging that violations to minorities on civil rights and liberties issues spawned the creation of the Voting Rights Act of 1965, have failed to address the direct impact of minority status on

the decisional outcome. The literature has established that certain extralegal variables, such as the judge's home region (Songer and Haire 1992; Carp and Rowland 1983; Wenner and Dutter 1988), and party affiliation, (Songer and Davis 1989; Ducat and Dudley 1989; Lloyd 1995), have influence on judicial attitudes and consequently the votes of judges. Attributes of the litigant may also influence the decision making process. Research on fair housing has found that minorities are indisputably discriminated against when trying to obtain accommodations (Massey and Denton 1993; 1988). In the voting rights context, there have been blatant displays of discrimination on account of race, ranging from forceful denial of access to the ballots to trumped up character and literacy tests (Davidson and Grofman 1992). Recognizing that racism does and has existed, it is possible that judges may be biased against these individuals in their decision making.

H4: Judges are less likely to protect voting rights when the plaintiff is a minority.

Cases were read to identify the ethnicity of the plaintiff and were originally coded according to the specific racial group involved in each case. However, I found that a substantial number of the cases only referred to the plaintiff (s) as having minority status which could, of course, include several different ethnic groups. Since there was no way to separate these groups, I collapsed all minorities into one large group for analysis. Further, not all cases in the data set mentioned racial status. Because of this, the rate that minorities win or lose will be compared to non-minorities and to cases that do not mention ethnicity at all. If the plaintiff was a minority, the variable was coded 1, 0 otherwise. I anticipate the coefficient to be in the negative direction.

Regional Differences

Research has indicated that background attributes influence significantly the attitudes of judges and that those attitudes come into play in the decision making process (Richardson and Vines 1970, Carp and Wheeler 1972; Rowland and Carp 1996; Tate and Handberg 1991). Such variables increase our knowledge of the judicial process at the federal (Songer and Davis 1990) and state levels (Hall and Brace 1994). As such, the importance of regional subcultures among the states influences the context in which the decision is rendered (Rowland and Carp 1996; Morgan and Anderson 1991; Cook, Jelen, and Wilcox 1994; Jelen 1995). The environment and history particular to the deep South and border states makes it a distinct political culture in which judges are more likely to defer to local and state government entities over minority rights and are less likely to protect disadvantaged civil rights and civil liberties claimants (Rowland and Carp 1996; Stidham and Carp 1987).

Not only are judges likely to be influenced by the culture in the region in which they were raised, but they are also likely to have been appointed the judgeship in the area from which they originate (Lloyd 1995). This factor only increases the probability that a judge sitting on the bench in Southern or border states will hold similar attitudes toward societal groups, as the predominant cultural view, and that this may be revealed in their decision making. However, I also do not rule out that cultural attitudes may affect attitudes even in adult life. Therefore, judges who are sitting on the bench in the South, but are originally from another geographic area, are not automatically immune from cultural effects and they too may be influenced by the community when rendering

decisions.

Even so, it is not accurate to put the mark of prejudice on all Southerners. Undoubtedly, Southern judges may be more likely to rule against civil rights plaintiffs given that the parochial values of judges are the result of state and regional boundaries that pervade the judges' legal education and socialization (Richardson and Vines 1970; Carp and Wheeler 1972). But it is not clear that all Southern judges were willing to comply with public sentiment and uphold the status quo because there are instances in which district judges were willing to defy the community and vote in a pro-civil rights manner (Hamilton 1973; Kemerer 1991). I divide border states and Southern states into two regions and estimate them separately for several reasons. First, border states have escaped the attention relegated on the South by the DOJ and other government entities. Secondly, the culture and history are distinct enough that I hesitate to lump them into one large region. Thirdly, border states have a unique history of equal protection that is not present in the deep South (Rosenberg 1991).

H4: Judges deciding cases that originate in Southern states are less likely to protect or expand voting rights.

H5: Judges deciding cases that originate in border states are less likely to protect or expand voting rights.

I expect that judges in Southern and border states will be less receptive to expanding voting rights, and therefore, the coefficient will be in the negative direction. If the judge was from the South or border states, the code was 1 for each separate region; 0

otherwise⁹.

I am also interested in identifying what particular effect region may have on a judicial decision maker when the case involves a minority suffrage claim. This is a salient issue that has clearly experienced resistance in particular regions of the nation (Hamilton 1973). The combination of region and minority status into an interactive variable may tell us more about the relationship of these indicators to the dependent variable. Not only are Southern and border regions more conservative, they have a history and reputation of deep embedded racism. It may be important then to investigate if discrimination has occurred throughout the nation, or if it is particular to certain regions that historically appear to have exercised racism.

H6: If the judge is from the South or border state and the plaintiff is a minority, the plaintiff is less likely to receive a judgment in favor of expanding voting rights.

As before if the judge is from a Southern or border state and the plaintiff is a minority the interactive variable is coded as 1, and 0 otherwise. I expect that for both regions the coefficient will be in the negative direction.

Partisan Influence

Party identification has been utilized in studies of all three branches of the national government as an indicator in categorizing individuals and agencies in a conservative or

⁹ Rosenberg's (1991) coding was used to establish which states constitute the South and the border. Southern states are operationalized as Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Border states include: Kentucky, Maryland, Missouri, Delaware, Oklahoma, West Virginia, and the District of Columbia.

liberal manner (Segal and Spaeth 1993; Hinckley 1990, 1994; Page and Shapiro 1992). It is also accepted that the three branches do not operate as completely separate spheres and that the policies of each are shaped by the policies of the others. The judiciary in particular may be subject to the influence of the executive branch. As discussed previously, presidents have hardly hidden the fact that they appoint judges that have similar political preferences to their own (Rowland and Todd 1991; Songer and Davis 1990). Approximately, 95% of appointments are made from the president's own party, although averages for each president range from a low of 79% for Ford to 97% for both Roosevelt and Reagan (O'Brien 1988, 32). Therefore, it is not surprising that many judicial studies have used the president's appointing party as a surrogate for ideology (Songer and Haire 1992; Tate and Handberg 1991; Carp and Rowland 1983).

As a surrogate for ideology, party representation has been found to explain liberal and conservative decisions at all levels of the judiciary (Segal and Spaeth 1993; Songer and Davis 1989, Rowland and Carp 1996). Studies of the Supreme Court have focused on major attitudinal shifts across natural courts that can be attributed to ideology and party identification (Murphy 1965; Tate 1981; Segal and Spaeth 1993). As changes in membership affect the party balance of the court, directional differences in ideology are readily apparent. Studies of the appellate (Songer and Davis 1989) and district courts (Carp and Rowland 1983; Rowland and Carp 1996) have also found party to be instrumental as an indicator that explains decision making. There is no individual study that has done a comparison of the differences in party impact among appellate and district court judges within the same analysis. As previously mentioned, the three judge panels in

vote dilution cases are composed of one appellate and two district court judges, thus, these cases provide a unique opportunity to do so. To conduct such an analysis is particularly compelling because it affords the chance to compare the two types judges on the same issue and using the same legal rules. It, therefore, allows an identification of the differences and similarities in decision making between the two kinds of judges.

H7: Judges appointed by Democratic presidents are more likely to protect or expand voting rights.

Cases were coded 1 if the appointing president was a Democrat; 0 otherwise. The coefficient is expected to be in the positive direction indicating that appointing presidents that are Democrats increase the probability of a pro-civil rights decision. It is also important to note that some research has shown that the president's party affiliation is an inadequate measure (Segal and Cover 1989; Lloyd 1995; Rowland and Carp 1980); and that the actual judge's affiliation or some scale measure of presidential ideology is more appropriate. Even so, it is questionable whether differences will be found that offer any substantial variation in the results considering the high number of appointees that are of the same party as the president at any given time (Songer and Davis 1989).

Overall, I expect to find that the interaction of both the legal and extralegal aspects will enhance our understanding of the judicial decision making process more than either standing alone, could. The Department of Justice and Supreme Court signal will highlight the legal constraints placed on judges during decision making. At the same time, the degree to which judges exercise their own policy preferences can be measured by how influential the background and litigant status variables are in the process. I now turn

to the following chapter which details the methods used to test the integrated process model and the results that were yielded.

CHAPTER IV

METHODS AND RESULTS

Estimation technique

Since the dependent variable is dichotomous in this data set, it is inappropriate and inefficient to use OLS regression techniques. Maximum likelihood techniques such as logistic regression or probit are more appropriate for calculating the probability of observing a particular outcome when estimating data with a dichotomous dependent variable. Such a technique is preferable because with a dichotomous dependent variable, 1) errors cannot have a constant variance which is a violation of OLS regression (Hamilton 1992) and 2) the true relationship between probabilities and the regressors must be nonlinear (Hamilton 1992; Aldrich and Nelson 1984, 24-30; Hagle and Mitchell 1992). In cross sectional data, like all other types of data sets, it is probable that there may be inherent problems with the data that would interfere with the ability to maintain valid inferences about the estimates (Stimson 1985). The cross sectional unit is the decision of each individual judge that participated in resolving the voting rights dispute.

While my first step in examining the nature of the data set was to be aware of problems that can interfere in correctly estimating the model, it is not appropriate to assume that they indeed exist. Therefore, my next step was to run diagnostics to ascertain whether or not the data contained variance and correlation problems. A Cook and Weisberg test indicated the data did not suffer from heteroskedasticity, and a fixed effects

model using period controls indicated that to the best of my ability there are no significant effects generated by any ten-year period.¹⁰ I, therefore, proceeded to estimate the model using the standard probit estimation technique.

The model outlined in chapter three is specified as follows:

$$\text{Pr (Civil Rights Support}_t) = \alpha + \beta_1 (\text{Signal}) + \beta_2 (\text{Fedpro}) - \beta_3 (\text{Fedanti}) + \beta_4 (\text{Prespty}) - \beta_5 (\text{South}) - \beta_6 (\text{Border}) - \beta_7 (\text{Allminor}) + \epsilon_t$$

Where:

Pr = the probability of a judge voting for an expansion of voting rights

α = the constant

β 's = probit coefficients

Signal = cue sent from Supreme Court on relevant precedent

DOJ/
Plaintiff = Department of Justice as plaintiff

DOJ/
Defendant = Department of Justice as defendant

President's
Party = appointing president's party

South = cases from Southern states

Border = cases from border states

Minority = cases with minority litigants

¹⁰Autocorrelation is a potential problem in a cross-sectional time series data set, but due to the fact that the dependent and independent variable are all dichotomies renders any tests for autocorrelation meaningless (Stimson 1985). While not a test for autocorrelation specifically, I did insert dummy variables for time to check for any relationships that may have been specific to series of ten year periods. No such problems were indicated and, therefore, I completed the analysis without further adjustments.

Results

Overall, model 1 in table 1 which includes both circuit and district court judges provides support for the integration of extralegal and legal variables to aid in the explanation of judicial decision making. This also holds true for the separate analysis of district court (model 2) and circuit court judges (model 3). Each of these models is statistically significant and an analysis of the chi-square allows a rejection of the null hypothesis that none of the coefficients is related to an expansive or protective voting rights decision being rendered by the judge. Due to the nature of the data the usual R-square test statistic for assessing the fit of the model is inappropriate. The chi-square statistic can substitute as an alternative measure for goodness of fit. Aldrich and Nelson (1984) indicate that higher figures for the chi-square with the covariates generally indicate a better fit of the model. The chi-square statistics indicate here that all three models achieve a decent fit (see Table 1).

Table 1 with models one, two, and three about here

The reduction of error (ROE) statistics indicate that for each of the models that the predictive rate is improved by applying my specification of the model.¹¹ While all three models improve our predictive capabilities, model 3 which just includes circuit judges provides the greatest improvement (34%) over what would be known just by using a null

¹¹ The calculation according to Brenner, Hagle, and Spaeth (1990) is as follows.

$$\text{ROE} = 100 \times \frac{\% \text{correctly classified} - \% \text{ in the modal category}}{100 - \% \text{ in the modal category}}$$

TABLE 1. PROBIT ESTIMATES OF JUDICIAL DECISION MAKING MODELS

	Model 1	Model 2	Model 3
	All Judges	Circuit Judges	District Judges
Supreme Court Signal	.1574 *** (.0572)	.3364 ** (.1194)	.1170 * (.0666)
Southern States	-.2157 * (.1197)	-.4626 * (.2626)	-.1489 (.1368)
Border States	-.8455 *** (.2180)	-1.120 ** (.4496)	-.8218 *** (.2563)
Presidential Party	.3612 *** (.1061)	.5982 ** (.2378)	.2954 ** (.1215)
Dept. of Justice Intervention Defendant	-.8692 ** (.3295)	-1.172 * (.6752)	-.7545 * (.3837)
Plaintiff	.4558 ** (.2069)	.1783 (.3970)	.5525 ** (.2450)
Minorities	.4807 *** (.1107)	.9504 *** (.2675)	.3544 ** (.1305)
Constant	-.5069 *** (.1307)	-.8203 ** (.2675)	-.4247 ** (.1516)
N	624	161	463
Model Chi- Square	78.66 (7 df) ***	40.15 (7 df) ***	47.31 (7 df) ***
Reduction of Error (ROE)	24%	34%	19.1%

* p<.05

** p<.01

*** p<.001

model. Model 1 including all judges and model 2 including only district court judges also do a modest job of improving our predictive capabilities with a 24% and 19.1% reduction of error respectively. All the models tend to over predict winning outcomes and under predict losing outcomes. Therefore, the tendency of the models would be to err on the side of being overly optimistic to voting rights plaintiffs about their probability of prevailing before any given judge.

Before assessing the individual hypotheses within the models, it is important to explain that a comparison across all three of the models is not possible due to the fact that the samples are of differing sizes. An analysis of each of the models individually will tell us much about the decision making of each type of judge and how they decide as a whole, but one cannot draw comparisons between appellate and trial court judges. However, whether there are similarities and differences between the judges is one of the more interesting questions of the research. Therefore, I created multiplicative interactive variables between the dependent and independent variables of one type of judge (circuit judges in this instance) and then included them in the model that contains district court judges. Thus, a sample was created within which comparisons can be made. The obvious problem of multicollinearity might at first seem to hinder this type of analysis, but not only is it unavoidable, it is not a relevant problem because I am not hypothesizing any directional relationships for the new model. All I am interested in finding is whether or not there are any significant differences in how the various independent variables influence decision making across the two sets of judges. The following section details each of the models separately and then assesses the results found from the analysis of district and

appellate court decision making discussed directly above.

As anticipated the signal variable is significant and in the correct direction for all three models. The model that includes all judges indicates the greatest significance, followed by circuit court and then the trial court judges. The results support previous literature which suggests that lower court judges, especially circuit court judges are deciding cases in congruence with the opinions presented by the Supreme Court (Songer and Sheehan 1990). Songer, Sheehan, Cameron (1994) have found that appellate court judges regularly issue decisions that are congruent with Supreme Court doctrine if the High Court has clarified the appropriate legal position. The literature analyzing Supreme Court signals and the trial courts was more ambiguous with some studies indicating district courts did adhere to signals (Gruhl 1982; Johnson 1987) and others finding that they do not (Baum 1980, 1994). The findings here show that although the relationship between the signal variable and circuit court judges appears to be stronger ($p < .01$), district court judges ($p < .05$) also significantly follow cues from our highest court.

It appears then that both types of judges are deciding cases congruently with the legal changes by the Supreme Court. If the Supreme Court decided a case in a liberal or conservative direction in a prior case that matches the case at hand in case type (reapportionment, at-large, or annexation) and level of dispute (federal, state, or local) then judges at both levels of the Court are more likely to find in the same direction as the High Court. These findings indicate that in this instance judges are aware of and respond to the legal cues of a higher authority.

The hypotheses for Department of Justice intervention were also supported, with

one exception, and in the predicted direction. Justice Department intervention increases the probability that judges will defer to the guidance and authority of the Department when contemplating a voting rights decision (see Chart 2 for the specific numbers of wins versus losses). However, there is only a statistically significant relationship in the models including all judges and district court judges. In contrast, circuit court judges are not more likely to decide consistently with the policy direction of the federal government most likely indicating that district court judges are responsible for the significant relationship found in model 1. This contrasts with other research findings that suggest appellate judges favor the top dog--Uncle Sam (Songer and Sheehan 1993; Rowland and Todd 1991). Perhaps district court judges who have more daily contact with the voting rights bar feel more comfortable in deferring to the federal government (McGuire 1990; Caldeira and Wright 1988). It could also be the case that district court judges are actually viewing Department of Justice policies as an indicator for the preferences of the executive branch since they fall under the auspices of that sector and any deference to DOJ is actually indirect support for executive branch policies.

When the Department is faced with having to defend itself, the probability is increased that the judge will decide in favor of the federal government. The relationship is most statistically significant in model 1 including all judges ($p < .01$), but is also significant ($p < .05$) for models 2 and 3. It appears that while district court judges defer to the DOJ both as plaintiff and defendant, circuit court judges only significantly defer to the DOJ when the Department is in its defendant role. It could be that appellate court judges grant DOJ more leeway when they are on the defensive, but apply more scrutiny to the legal

standards asserted by DOJ when they are on the attack. The results lend support to the literature on upperdog versus underdog status. The only notable exception is the lack of statistically significant support from circuit court judges when the DOJ is acting in its role as plaintiff.

While it may appear that the DOJ enjoys the support of judges in the litigation process more often than not, I caution that this is not necessarily always the case. Before we can make any assertions, more research needs to be conducted at the trial level studying the relationship between upperdog and upperdog litigants. Perhaps the government does well here against single clients, but how well does it fair in cases facing other upperdogs? Do judges rank upperdogs according to how important and influential they perceive these litigants to be when rendering a decision and if so by what criteria?

In addition, voting rights is only one area of the civil rights domain. It may be that in other substantive areas, such as school desegregation, the federal courts are hesitant to comply with the directives of the national government (Giles and Walker 1975). In school desegregation, the federal courts were responsible for initiating difficult legislation which left judges to render decisions according to ambiguous rules and without a direct authorization detailing the level of involvement entitled to the federal government. Trial court judges may be more likely to support the federal government in voting rights cases because the Voting Rights Act of 1965 spelled out in excruciatingly detailed guidelines for the courts to follow and gave clear justification for Justice Department involvement. Therefore, judges are left without much room for a liberal interpretation of the policy.

The results for the appointing president's party are of no surprise and are

consistent with most civil rights literature on the courts which asserts the primacy of presidential preferences for both appellate and district court judges (Rowland and Carp 1996; Rowland, Carp, and Stidham 1984). Plaintiffs win 59.3% of the time when the appointing president is of the Democratic party (see Chart 3). The relationship is statistically significant across all three models and in the predicted direction. When the appointing president is of the Democratic party the probability the judge will vote to expand or protect voting rights is increased. Democratic presidents appoint judges who decide cases in a pro-civil rights manner, and Republican appointees appear to exercise more caution in expanding voting rights.

The above measure can at most be a surrogate for partisanship and might not be the preferred measure, but in any case does appear to be a decent one. A more appropriate measure would be an ideology measure that can capture strength as well. It has been noted elsewhere (Lloyd 1995) that partisanship and ideology although certainly related can and do measure distinct and different relationships.¹² Therefore, Zupan's measure utilizing the ADA scores of appointing presidents was also used in the model. This indicator is, of course, also only a surrogate and the results were substantially the same.¹³ I ultimately chose to run the final models with the partisanship variable because the ADA scores are only available at this time to 1990, thus forcing an omission of three

¹² According to Lloyd (1996) partisanship can measure loyalty and attachment to a reference group, whereas ideology measures aspects such as attitudes and values.

¹³ Ideally, ADA scores on all of the individual judges would be the most accurate measure, however, it is a measure that is yet unavailable due to the enormous task it would be to track and create scores for many thousand judges.

years of data.

The biggest surprise in the results of the study was from the measure for minority status. Although, the variable is highly significant for all three models, it is in the wrong direction. If you are a minority suing for the expansion of voting rights, you are more likely to have the judges find in your favor. This is in sharp contrast to what I believed to be the case and is true across all racial categories (see Chart 4). Minorities were litigants in more than half of the cases in the study (n= 354 or 56.7%) therefore providing an ample number of cases in which to test the proposition. There are several possibilities that might help to explain this finding and I believe it would be best to do so in conjunction with the explanation of the results for the region variables.

For the most part the hypothesis for the South and border regions were confirmed and in the predicted direction. In all but model 3 (southern district judges), the probability of a judge rendering a decision in favor of voting rights is significantly decreased if the litigant is suing in a Southern or border state. This is not surprising in light of the history of the South and its resistance to changing the status quo in the voting rights arena. However border states, which have demonstrated an unusual history of equal protection in other substantive civil rights areas are also deciding cases in a non-protective manner (Rosenberg 1991). The apparent contradiction between this overall finding for region and that of the minority variable at first was difficult to reconcile. I began to run frequency tests and create interactive variables and discovered some fairly interesting results.

Why is it that in regions of the country in which prejudice and resistance to change have been the most apparent, minorities who have been the targets of this resistance, are in

fact doing well in court. There was the unlikely possibility, due to what we know about demographics, that most cases in which minorities sue were coming from other regions of the country. This proved to be untrue. In 274 of the 624 total cases minorities were litigants from Southern and border states. Something else was responsible for the conflicting results. Next, I created interactive variables for Southern states and minorities and border states and minorities (see tables 2 and 3). In Southern states a minority is still more likely to prevail, but in border states the probability that the judge will find against a minority litigant is increased. What is it that could account for the difference in results for these two regions?

Tables 2 and 3 with models 4-9 about here

Frequency counts for Department of Justice involvement in each region revealed that 48 of the 49 cases in which DOJ intervened were in the South. For a majority of the years since the Voting Rights Act of 1965 was passed, section 5 of the Act has specifically required eight of the eleven southern states to submit all new reapportionment plans and changes to the DOJ for preclearance. The deep South may be overcompensating when deciding cases involving minority litigants due to the obvious scrutiny they are receiving through the Voting Rights Act itself and the Department of Justice. Most states in the border region, on the other hand, were only required to submit plans to the Department in more recent years (Davidson and Grofman 1992). Because these states have been left virtually undisturbed by government intervention, they have been able to escape the

TABLE 2. MODEL RESULTS FOR ALL JUDGES: THE INTERACTION OF REGION AND RACE

	Model 4 All Judges	Model 5 All Judges
Supreme Court Signal	.1583** (.0559)	.1356** (.0559)
Southern States/ Minority litigant	.2990** (.1131)	—
Border States/ Minority litigant	—	-.6114** (.2433)
Presidential Party	.3350*** (.1046)	.3723*** (.1039)
Dept. of Justice Intervention Defendant	-1.122*** (.2953)	-.7505** (.3398)
Plaintiff	.4132* (.2046)	.5258** (.1970)
Constant	-.5142*** (.1106)	-.3811*** (1063)
N	624	624
Model Chi- Square	55.95(5 df) ***	55.52(5 df) ***
Reduction of Error (ROE)	20.8%	23%

* p<.05

** p<.01

*** p<.001

TABLE 3. MODEL RESULTS FOR DISTRICT AND CIRCUIT COURT JUDGES:
THE INTERACTION OF REGION AND RACE

	Model 6	Model 7	Model 8	Model 9
	District Court Judges		Circuit Court Judges	
Supreme Court Signal	.1325* (.0651)	.1072 * (.0657)	.2604* (.1124)	.2253* (.1095)
South judges/ minority litigant	.2768** (.1285)	—	.3977* (.2524)	—
Border judges/ minority litigant	—	-.8603** (.3059)	—	-.0987 (.4450)
Presidential Party	.2748** (.1202)	.3039** (.1202)	.5030** (.2232)	.5958** (.2149)
Dept. of Justice Intervention Defendant	-1.041*** (.3468)	-.5424 (.4018)	-1.324** (.5771)	-1.343* (.6908)
Plaintiff	.5191** (.2442)	.6236** (.2355)	.0850 (.3807)	.2369 (.3635)
Constant	-.4743** (.1275)	-.3266** (.1225)	-.6624*** (.2265)	-.5704** (.2204)
N	463	463	161	161
Model Chi-Square	35.37 (5 df)***	39.36 (5 df)***	23.63 (5df)***	21.18(5df)***
Reduction of Error (ROE)	19.8%	18.7%	20.1%	20.5%

* p<.05

** p<.01

*** p<.001

scrutiny forced on their Southern counterparts. This finding also lends further support to the notion that judges when faced with legal standards in which they are forced to comply will adhere to the upperdog entity.

Of further interest is the involvement of the Department of Justice when it is in the role of defendant. Twenty-eight of the thirty-four cases in which the DOJ is the defendant originate in the border states. Two apparent possibilities exist: 1) the plaintiffs in these cases are minorities that are suing the DOJ for their negligence in policing this region and are trying to get the DOJ to enforce preclearance requirements in this area, or 2) the border states are taking a proactive aggressive stance against the DOJ for any requirements to which they may be subjected. Considering the fact that only in border states are minority plaintiffs more likely to lose and that in thirty-one of the thirty-four instances in which the DOJ was sued the plaintiff was of minority status, I am more willing to support the former assertion.

The last step is to run significance tests for circuit and district court judges to ascertain whether or not the indicators I have found to be relevant in decision making are different in magnitude across the two types of judges. Wald chi-square tests were generated for the interactive variables and the other independent variables in the model and none of the seven indicators reached significance.¹⁴ This research finds that district and circuit court judges make decisions according to the same criteria in similar ways. The

¹⁴ The tests were run in STATA using the "test parm" command which produces a Wald-chi-square for significance. None of the variables were statistically significant at $p < .05$. The results are not presented here in the form of a table because the results as a whole are not what is of interest. Only the coefficients were necessary to implement the Wald chi-square tests and simply interpret the results.

findings for the signal variable are consistent with studies done on the appellate and district courts by Gruhl (1980) and Johnson (1987), but this is the first study of which I am aware that compares the two types of judges across many indicators. Thus, even though district and circuit court judges have different roles in the judicial hierarchy, they are responding in a similar manner to the influences found in their environment.

The results lend support to some interesting propositions. Both legal and extralegal variables when integrated into one model help explain the variation in voting behavior for both types of judges. Judges exercise their own policy preferences and follow the law. In addition, the conclusion that district and appellate court judges engage in decision making in similar manners seems to say that judges view their decision making role in analogous ways across courts. This is true even though each of these two courts actual functions and processes are different for each type of judge. Further research would need to investigate whether or not this is a phenomenon unique to the Voting Rights arena or if the pattern is followed across issue areas.

Federal Government Wins and Losses

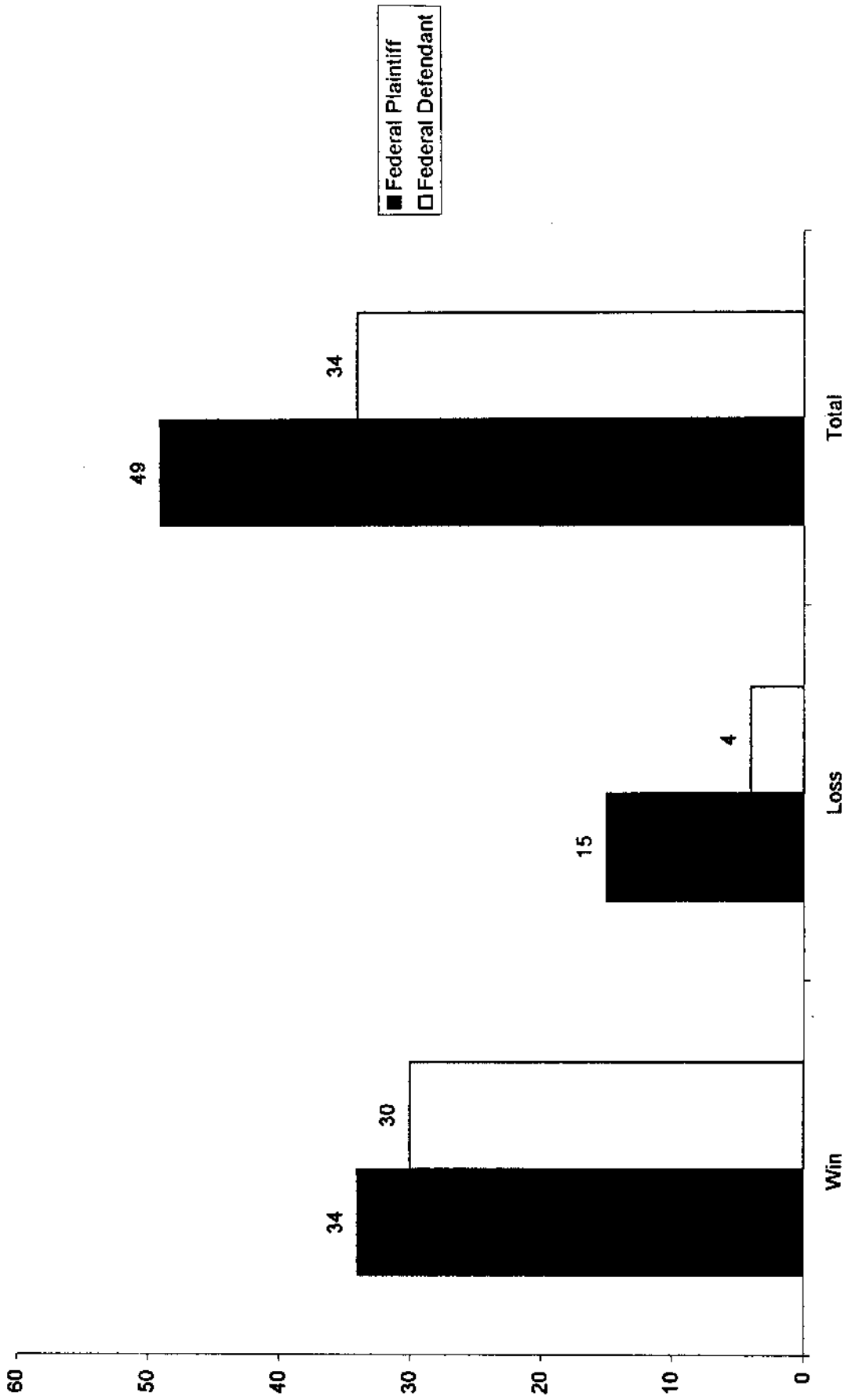


CHART 2

Percentage Wins by Judges' Party

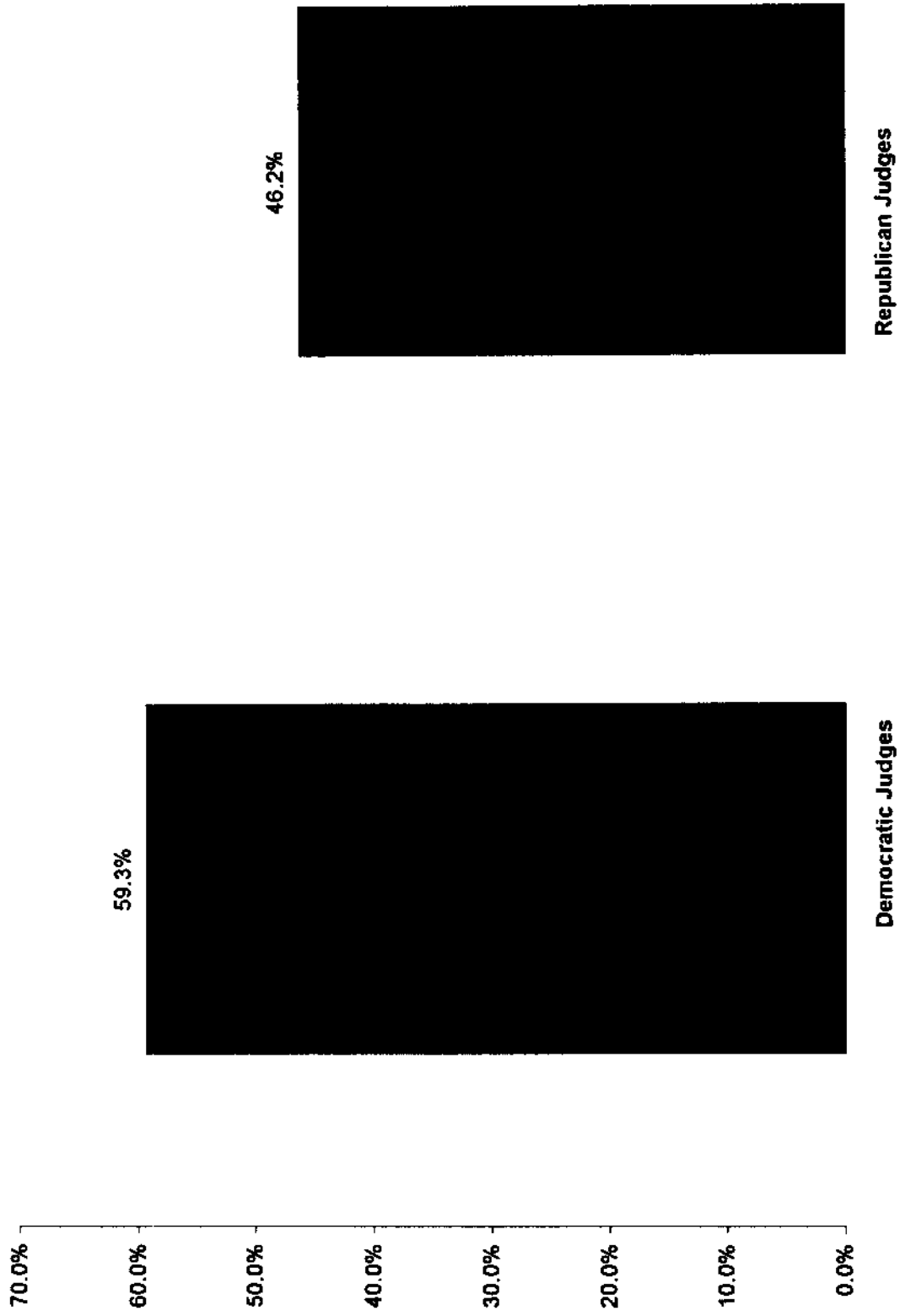
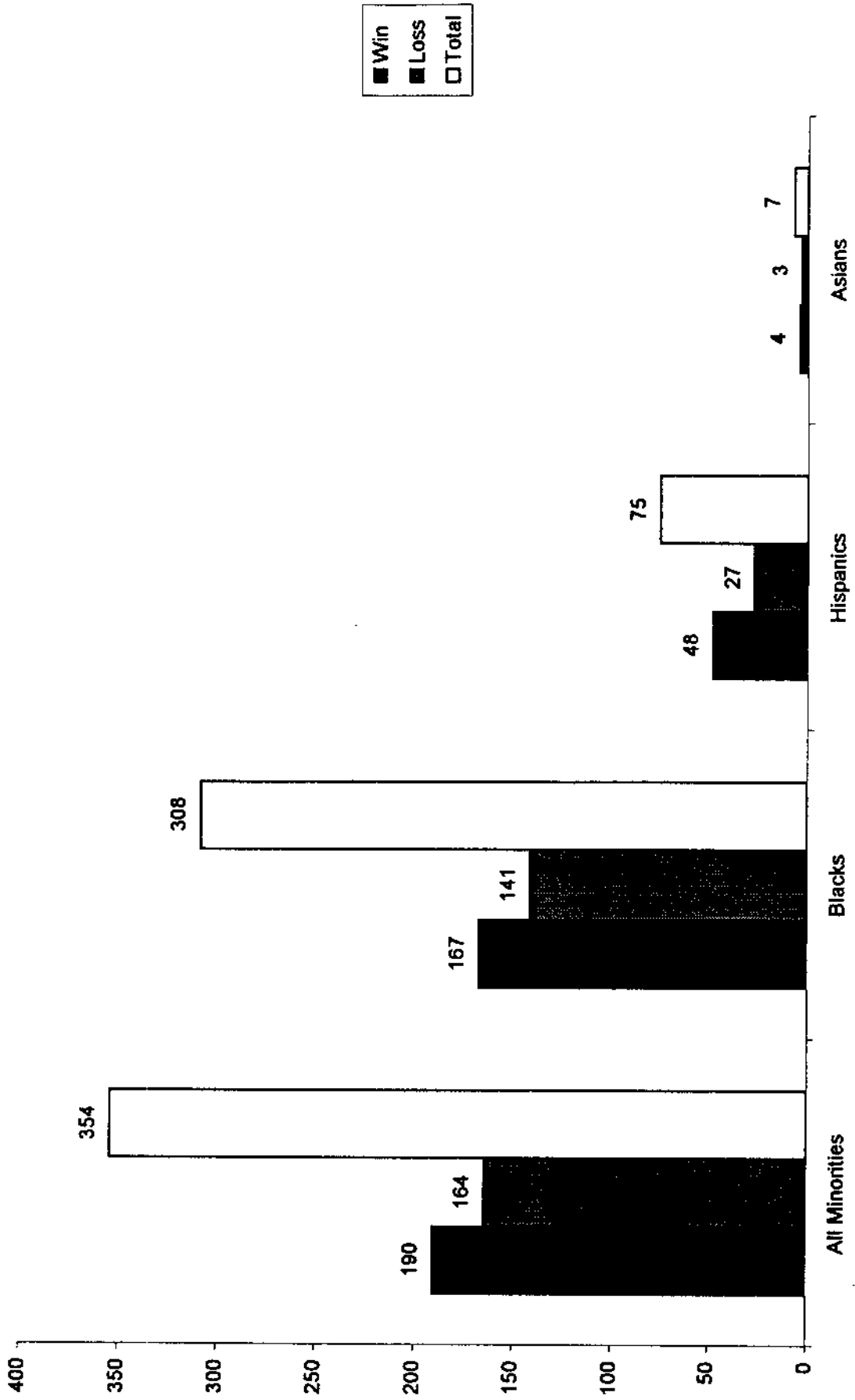


CHART 3

Case Wins by Racial Category



CHAPTER V

CONCLUSION

This thesis has sought to explain the process involved in judicial decision making. I have sought to answer what is the process judges engage in when rendering decisions and what factors are most influential while making those decisions. I addressed this question by choosing the substantive policy domain of voting rights cases in the federal district courts. Fortunately, this particular issue area has also allowed exploration into additional interesting questions. For example, in what way do judges sitting at different levels of the courts interact with each other, how have institutional factors influenced legal decisions and how has the evolution of certain legislation, such as the Voting Rights Act of 1965, modified behavior within certain regional cultures?

First and foremost however, I examined proposals that have enjoyed recognition only in the last decade. I propose that both the extralegal and legal aspects of the legal environment of the decision maker contribute to the cognitive process involved in judicial decision making. The traditional view of legal scholars and their students emphasizes the relevant law at issue, the facts of the case, and the appropriate prevailing precedent. These are the criteria posited as the most relevant and important in the decision making process. Similarly, personal attributes may predispose a person to have certain attitudes, morals, and values, but these biases are reserved for expression in the appropriate political venue. It is critical to retain a neutral and impartial judiciary in order to ensure equal protection in

the execution of the law. Unfortunately, this is an idealistic standard that even judges agree that decision makers would not be able to honor.

The legal perspective was first challenged by judicial scholars in the early forties with justifiable reason. The biases a decision maker has when he wakes up, has coffee, and drives to court do not simply disappear the minute the judicial robe is donned. Within the interpretation of any controversy the decision maker may unconsciously construe the law in accordance with his or her own personal preferences. Thus, it may be an impossible task to achieve a truly neutral arbiter. I agree with the proposition in this line of literature and have shown that purely extralegal attributes such as race and party do matter, but I have also proposed and shown evidence that legal aspects are also very relevant. For example, when we look at the rate of adherence of the lower court to the Supreme Court and the involvement of the Department of Justice, we see that both these legal variables are relevant in the decision making process. Thus, both extralegal and legal perspectives help us explain how the process of decision making operates.

This study examined decision making by comparing decisional outcomes across appellate and district court judges. The model that comprises all judges demonstrates that both sets of criteria are significant for all types of decision makers when they are combined. However, it does not tell us if certain decision making criteria are more influential for either type of judge. It has been argued that due to the nature of a district court judge's job they are more attuned to micro level indicators such as the facts of the case, evidentiary proofs, witness' statements, and the rule of law when determining which litigant should prevail. On the other hand, appellate court judges are constrained by the

record that is presented on appeal and pay attention to macro level indicators such as the relevant precedent that should be applied and the policy implication of any particular case. We might then consider that due to these differing job orientations legal aspects may be more of an immediate consideration for district court judges than their appellate court counterparts who enjoy the ability to exercise more subjective discretion in decision making.

What I found in running an analysis that would measure any possible differences is that there is no significant difference in the explanatory power of any of the variables in relation to each of the two types of judges. These findings are consistent with studies done on the appellate and district courts by Gruhl (1980) and Johnson (1987), but to my knowledge the study conducted here is the first that compares the two types of judges across many indicators. Thus, even though district and circuit court judges seemingly play out different roles within the judicial hierarchy, they are reacting in a similar manner to the influences found in their environment.

This finding is intriguing because it requires us to ask why there are few differences in the decision making process. Perhaps judges that deal in specific issues make decisions based on similar criteria, for example, a judge that only deals in divorce or tax law, and the differences we expected to see across the two levels of the courts due to role orientation, will appear when the analysis is broken down into more specific issue areas. In other words, it is differences in the law and environment surrounding specific issues that determine decisional processes, not the judicial role associated with a certain level of the courts. In addition, it is possible that differences are not apparent because we

should not expect there to be. Judges are ingrained in school with relatively the same perspective toward arbitrary decision making and the importance of the law. They are also all subject to the same biases as everyday persons on the street. This in itself may be enough to mute out any differences in judgment that role orientations might otherwise predispose a decision maker to rely on.

But before we conclude altogether that in no case do the two types of judges differ further research would have to 1) examine the model across different issue areas as suggested above, and 2) further investigate the impact of the signal variable between other levels of the court. I find, in accordance with Gruhl (1980) and Johnson (1987), that both appellate and district court judges comply (at the same levels) with the mandates of the Supreme Court. Songer and Haire (1992) have also reported that the compliance levels of the appellate courts to the Supreme Court are very high. What has not been done and what should be undertaken next is to measure the compliance rate of the federal district courts to the appellate courts. Both types of judges may be “listening” to the directives of the Supreme Court but do federal district judges comply with the first court of appeal in the same manner?¹⁵ The question is even more intriguing when there is no clear standard that has been handed down by the Supreme Court.

Perhaps there is some untapped relationship between a judge’s aspirations to advance within the judicial hierarchy and role orientation that interferes with regular

¹⁵ It was impossible to conduct this types of research here because cases with three judge panels are directly appealed to the Supreme Court and therefore no appellate court signal exists. A different type of study could examine this question and would be helpful in explaining further the principle-agent process.

compliance at the district level. Judicial ambition may lead judges to make decisions they think will be beneficial to their careers. If that is true, judges may pay less attention to the previous legal rulings of the Supreme Court in order to maintain “a good judicial record.” A judge without the desire to progress upward may not afford the same weight to the reprisal, and therefore, may be more likely to make decisions according to their own preferences. In addition, the number of cases litigated in the district courts per year is monstrous, but the number of cases that are actually appealed is much lower. This fact alone may give a district judge a sense of security that allows him to make decisions according to his own policy agenda.

It is also possible that three judge courts operate under some type of institutional collegiality. For instance, does it matter if the majority party in the state legislature is of the same party as the judge or judges reviewing the reapportionment plan? Judges may give the benefit of the doubt to the legislature, to whom the job of reapportionment is constitutionally allotted, especially if that legislature is of the same party as the judge. It would be interesting to know whether partisan conflict or cohesion also holds in small settings such as three judges panels. One might wonder, for example, how often when the panel’s party composition is split two to one, members of the same party and the member of the opposite party agree.

Although progress has been made, many questions remain unanswered in the area of judicial decision making. We need to improve our theoretical understanding of whether certain types of cues are either legal or extralegal. Indeed, they may be both. Integrated process models can then be put to the task because we could directly compare the legal,

extralegal and integrated process models using encompassing tests. Research such as this can be our best hope to further our knowledge of the decision making process. Only when we have a firm understanding of how the decision making process works can we truly evaluate if judges are able to make “the end legitimate.”

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