

A NOTE CONCERNING PARTISAN INFLUENCES ON TRIAL-JUDGE DECISION MAKING

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During the past decade students of the judicial process have devoted considerable resources to an examination of the influence of political party affiliation on judicial decision making. The consequences of this research are substantial due to the key position held by the political party variable in judicial "social background" theory¹ and value questions will necessarily be raised if partisan membership is found to activate certain decisional propensities in a judge's behavior.

Research on the influence of party affiliation on judicial decision making, however, has not been distinguished by clear findings and has left us in a position from which we are unable to generalize to courts not yet studied. Early work on the political party variable concluded that its relationship with decision making did indeed exist. Schubert (1959: 129-142) and Ulmer (1962), in studying workmen's compensation decisions handed down by the Michigan Supreme Court, demonstrated the important role played by partisan politics on that particular tribunal. During this same period Nagel published an article suggesting the relationship between party identification and decisional outcomes on federal and state supreme courts over various case subject areas (Nagel, 1961a and 1961b). The differences between judges of dissimilar parties, according to these early studies, are found in the fact that Democratic judges, to a greater extent than their Republican counterparts, favor the underprivileged party (the laborer, the individual deprived of his rights, the debtor, etc.). In the later 1960s several additional studies supported, with varying degrees of success, the notion of a linkage between party and decisional outcomes (Vines, 1964; Schmidhauser, 1962; Goldman, 1966; Grossman, 1966).

More recent research has indicated an absence of the party-decision-making relationship. Don Bowen, in applying political affiliation and other background variables to state supreme courts and the federal courts of appeals, failed to account for meaningful portions of variance on several classes of litigation

(Bowen, 1965). In his research on the Wisconsin Supreme Court David Adamany was unable to demonstrate that the political party variable was capable of explaining significant amounts of judicial behavior as had previously been found in the Michigan Court (Adamany, 1969). Based on this research, our answer to the question of partisan influences on judicial behavior is noticeably incomplete. Before we are able to formulate general statements on this issue additional study is necessary.

The findings presented here are the result of testing the effect of partisan influences on the behavior of United States district judges. This is a departure from previous research which has concentrated on the appellate level rather than on the trial courts.² The study of party and the federal district courts is especially important for at least three reasons. First, it is in the district courts that the bulk of federal litigation is decided with the great majority of cases never reaching the appellate stage. Second, district judges have tended to be political activists prior to assuming their place on the bench (Goldman, 1965). And third, the recruitment of district judges is substantially controlled by party considerations. For example, President Eisenhower appointed 125 men to the trial courts (about half the total number of district judgeships at that time), of whom 92.8% were Republicans, and in his three years in office President Kennedy appointed 103 individuals (approximately one-third of the total number of district judgeships), of whom 90.3% were Democrats (Goldman, 1965). Given these facts, if the party variable were operative, it would not be surprising to find differences in district court output following changes in party control of the White House.

From a random sample of 1,995 civil liberty decisions³ reported in the *Federal Supplement*⁴ for the years 1963-1968, we studied the 1,177 decisions for which we were able to identify the political party affiliation of the judge involved.⁵ This final data pool represented approximately one-third of the total number of civil liberties decisions reported in the *Federal Supplement* for the year studied. One hundred ninety-three district judges participated in one or more of these cases. The party affiliation of the judge was treated as the independent variable and the outcome (deciding for or against the civil liberty claim) as the dependent variable.

Given this large sample size we have assumed that the strength of case stimuli and other extraneous variables are ran-

domly distributed throughout our data and are uncorrelated with party identification. This assumption is necessary due to the fact that district courts are primarily single-judge tribunals. We do not have a situation in which a number of judges have each responded to an identical set of cases. Therefore, we are unable to follow the methodological path of previous research on the political party variable which has examined collegial courts. This forces us into an unfortunate position from which we have little control over variables such as case stimuli strength and are unable to employ such statistical techniques as blocking. Although perhaps less desirable, the remaining alternative, should this line of inquiry be extended to the trial court level, is to handle the data in aggregate analysis. If there are significant differences in the decision making of Democratic and Republican judges in the federal district courts, this variance should display itself in the results presented here.

We have relied primarily on the phi coefficient as a statistical measure to test for the possible relationship between partisan affiliation and the outcomes of civil liberties cases. Phi may be interpreted as a correlation measure for nominal data in much the same manner as the correlation coefficient (r) for interval data.⁶

Table One illustrates the general results of this study. The notion that the political party of district judges and decisional outcomes on civil liberties litigation are related does not receive support in this analysis. The phi value of .028 reflects the weak relationship between these two variables. However, Table One may be too general to account for regional differences. For example, it is possible that the decisions of conservative Southern judges, when classified with the more liberal decisions of judges from other regions, cause any expected partisan variance to dissipate. Table Two summarizes the results of four contingency table analyses based on regional classifications. The findings of these tests indicate that knowledge of political party affiliation gives us little assistance in predicting judges' decisions on civil liberty matters.⁷

This excursion into the trial court level has obviously not solved our problems with respect to the party variable. We are now faced with the more basic problem of why party affiliation is an important factor in one jurisdiction but not in another.⁸ A systematic study of this theoretical question is now necessary for a more complete development of the social background theories of judicial behavior.

TABLE ONE: PARTY AFFILIATION AND DECISIONAL OUTCOMES ON CIVIL LIBERTIES CASES

	Democrats Percent. (n)		Republicans Percent. (n)		
Pro-Civil Liberties Decisions	37.3	(274)	40.0	(177)	451
Con-Civil Liberties Decisions	62.7	(461)	60.0	(265)	726
	100.0	(735)	100.0	(442)	1177
	Phi = 0.028				

TABLE TWO: PARTY AFFILIATION AND DECISIONAL OUTCOMES: A SUMMARY TABLE OF REGIONAL DIFFERENCES

REGION	DEMOCRATS		REPUBLICANS		Phi.
	Percent Pro. c.l.	Total (n)	Percent Pro. c.l.	Total (n)	
SOUTH	42.2	(427)	45.1	(193)	0.027
MIDWEST	39.3	(112)	45.8	(72)	0.065
WEST	36.7	(49)	31.5	(54)	0.055
EAST	21.9	(146)	32.5	(123)	0.119
		(734)		(442)	

Note: Judicial districts were assigned to regions in the following manner: **SOUTH:** Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia. **MIDWEST:** Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin. **WEST:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming. **EAST:** Connecticut, Delaware, District of Columbia, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont.

FOOTNOTES

- ¹ Recent social background research can be traced to the early work of John R. Schmidhauser. See, for example, Schmidhauser (1959).
- ² An interesting position is taken by Nagel in justifying the use of appellate courts in social background studies: "... if characteristics in the backgrounds of state and federal supreme court judges are found to influence their decisions, then one can conclude that characteristics in the backgrounds of lower court judges probably influence their decisions even more. Such a conclusion is reasonable in view of the relative absence of formal opinions which are jointly arrived at to justify decisions reached in lower court proceedings, and in view of the fact that lower court proceedings involved more subjective factual issues concerning who did what as contrasted to legal issues concerning what can be done legally." (Nagel, 1962: 427). One exception to this concentration on the appellate level is a portion of Vines (1964) on race relations cases.
- ³ A civil liberty decision was operationally defined as one based on a question involving non-economic rights protected by the first eight amendments to the Constitution, and the Civil War Amendments. Civil liberty cases have received specific study in Bowen (1965), Vines (1964), Nagel (1961a&b, 1962) and Goldman (1965&1966).
- ⁴ For a discussion of this data source see Whitaker (1969) and Dolbeare (1969).
- ⁵ In the case of a three-judge district court data were gathered on the behavior of the district judges voting on the case, with courts of appeals judges eliminated from analysis. Political party affiliation data were collected from standard "Who's Who" sources. The outcomes (for or against the civil liberties claim disputed in the case) of those decisions for which political party affiliation of the judge was known were compared through contingency table analysis to the outcomes of those de-

cisions for which we did not have party membership data. Statistical tests did not reach conventional levels of significance. Therefore, we eliminated the 818 decisions for which we had no party data without fear that this elimination would create a bias in the remaining sample.

- ⁶ A description of the phi coefficient and its relationship to r may be found in Hays (1963: 604-606). Perfect association between party and decisional outcomes would be represented by a phi of 1.00, and a complete lack of association by a phi value of 0.00.
- ⁷ When our data were broken down into three substantive categories (First Amendment, criminal rights, and political-social equality questions) no partisan differences were found. For all tests reported here lambda values were computed (Hays 1963: 606-610). The results approximated zero in all cases.
- ⁸ Adamany (1969) offers several quite plausible explanations for this difference, which merit empirical study.

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