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Judicial Decision-Making on the Florida Supreme Court: An Introductory Behavioral Study

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JUDICIAL DECISION-MAKING ON THE FLORIDA SUPREME COURT: AN INTRODUCTORY BEHAVIORAL STUDY

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Sophisticated people should recognize the personal power of judges but the creative role of the judge should not be divulged else the nation will succumb to totalitarianism.

—Thurman Arnold

It does justice good to be administered in the open; the wind blows her skirts up and you can see what she's got underneath.

—Bertolt Brecht

I. INTRODUCTION

Courts are often studied because they are such highly visible problem-solvers and are therefore so often called upon to carry out vital tasks in the process of social control. Even those students of law who do not adhere to the tightly-structured hierarchical Austinian model of law and instead see law as a broader concept which includes many informal processes will agree that courts nevertheless have a significant role in the overall scheme of things legal. That judges who sit on these courts are important need hardly be emphasized. Law students spend most of their study hours reading opinions of judges, and it is considered the high point of a lawyer's career to be raised to the bench of a high court. To law students and lawyers it is second nature to assume that courts and their opinions are the central feature of law.

As we move through the complex court structures of this country, from the trial courts to the lower appellate courts to the state supreme courts, we emerge at the United States Supreme Court, which is generally considered to be at the top of the hierarchy. There is little doubt that the United States Supreme Court is the final word on a number of issues, but it is far from being *the* supreme court on all or even many issues. The mistaken impression that the Supreme Court is omnipotent comes in part from the notoriety, public and professional, given its decisions. Moreover, children are taught early in their school careers to look with reverence at the concededly awesome institution which shaped the history of the infant nation. Indeed, the Supreme Court does act as overseer of federal rights, interprets the Constitution and federal statutes, solves conflicts be-

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tween states, and exercises its supervisory power over the federal courts. What tends to be forgotten is the other dimension of federalism: state courts operating for the most part independently of the federal court system.

State courts, in fact, have a much greater, albeit less conspicuous, impact on day-to-day existence. One need only ask any practicing attorney how many cases he has taken to the United States Supreme Court or how often he gets a case with a constitutional issue. While the Supreme Court each term decides cases of great importance to the freedom of the individual, for every such case at least fifty workmen's compensation cases reach the Supreme Court of Florida, and probably 2,500 such cases reach the highest courts of all the states. The importance of these cases to the injured workman is not to be denied, and it does not matter to him that the decision was not made by the highest court in the land. As a further illustration, the number of people directly affected by the *Gideon* or *Escobedo* cases is obviously not nearly so great as the number who feel the impact of the Florida Supreme Court's decision on ad valorem taxation.[1]

While the United States Supreme Court is moving forward in many important areas, the state courts are making innovative decisions in equally significant areas such as family law, conflicts, torts, and property law. As Mr. Justice Brennan recently said:[2]

> We should remind ourselves that it is these state court decisions which finally determine the overwhelming total of all legal controversies in the nation. For, of course, our system of justice intrudes the Supreme Court between the state courts and litigants only in the most narrow class of litigation which deals with federal questions. How infinitesimally small is that class is evident when I tell you that last term . . . we could find less than 75 [cases] which justified our inquiry into the merits of what the state courts had done.

Moreover, even in the narrow area in which the Supreme Court invokes federal jurisdiction, the impact on the states may be softened by a substantial degree of noncompliance with federal mandates. The courts may openly defy the Supreme Court, as in school desegregation, or they may distinguish the facts as was so often done after the *Escobedo* case. Thus, the state courts, particularly the highest state court through its influence on subordinate courts, have a far greater impact on our daily existence and on the day-to-day practice

1. As just one of a long series of such cases, see McNayr v. Dupont Plaza, Inc., 166 So. 2d 142 (Fla. 1964).

2. Brennan, *State Supreme Court Judge Versus United States Supreme Court Justice: A Change in Function and Perspective*, 19 U. FLA. L. REV. 225 (1966).

of the average attorney than does the United States Supreme Court.[3]

The Supreme Court has been analyzed from every possible perspective. Sociological backgrounds of the justices have been studied intensively, and these characteristics (for example, political party or ethnic affiliation) have been correlated with the justices' decisional tendencies (for example, for or against the defendant in criminal or negligence cases).[4] The voting patterns of the justices have been studied with the use of "block" or "scalogram" analysis. The object of this type of attitudinal study is to understand and quantify variables surrounding the decision which may motivate the justices to decide in a particular way.[5] This is the so-called "behavioralist" approach to the study of judicial decision-making. The justices' "off-the-bench" speeches and writings have also been analyzed for correlation with background and decisional doctrine.[6] One value of these behavioralist or attitudinal approaches is that they shift the observer's focus from purely doctrinal considerations to other variables which may play just as important a part in the process of decision. Thus the whole spectrum of knowledge relating to justices' backgrounds, voting patterns, and off-the-court sayings is available for the use of those willing to recognize its probable significance.[7] These methods may also provide a sophisticated mathematical model for prediction of future controversial decisions. (For a more detailed discussion see Appendix A on methodology.) Finally, in addition to these methods is "traditional" legal analysis which deeply probes the facts and doctrine of each case, attempts to relate new decisions to past ones, checks for consistency, and charts the "state of the law."[8]

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3. We do not deny, of course, that the states are constantly under the considerable influence of federal agencies. However, we are here comparing the United States Supreme Court with the highest court of the state.

4. See Nagel, *Ethnic Affiliation and Judicial Propensities*, 24 J. POLITICS 92 (1962); Nagel, *Political Party Affiliation and Judges' Decisions*, 55 AM. POL. SCI. REV. 843 (1961).

5. See SCHUBERT, JUDICIAL DECISION-MAKING (1963); SCHUBERT, QUANTITATIVE ANALYSIS OF JUDICIAL DECISIONS (1959); Kort, *Predicting Supreme Court Decisions Mathematically: A Quantitative Analysis of the "Right To Counsel" Cases*, 51 AM. POL. SCI. REV. 1 (1957).

6. See Nagel, *Off-the-Bench Judicial Attitudes*, in JUDICIAL DECISION-MAKING 29 (Schubert ed. 1963); THE SUPREME COURT: VIEWS FROM INSIDE (Westin ed. 1961). For an interesting study, which relates "off-the-bench" materials to the power of the justice on the bench, see MURPHY, ELEMENTS OF JUDICIAL STRATEGY (1964).

7. The recent publication of a symposium on "Jurimetrics" (a term referring broadly to a behavioralist approach to judicial decision-making) in the *Harvard Law Review* (vol. 79) may signal a formal acceptance by the academic legal profession of a large part of the behavioralist method. The method has long been accepted in political science circles.

8. For a balanced appraisal of the behavioralist and traditional schools of analysis see SHAPIRO, LAW AND POLITICS IN THE SUPREME COURT (1964); see also

Each of these methods of analysis has often been applied to the United States Supreme Court.

Assuming that much of value toward a greater understanding of a court and its function can be learned from such studies, of whatever kind, and assuming further that state supreme courts (and, of course, state courts generally) have a far greater cumulative and immediate impact on our daily lives, the absence of serious scholarly study of the Florida Supreme Court is striking. For these reasons, a study of the Florida Supreme Court seems to be more promising at this time than further studies of the United States Supreme Court. Regrettably, the only published works dealing with Florida's highest court are documentary histories or studies of the judicial selection process.[9] No available study thus far has even purported to analyze the process of decision in this important body. The lack of materials on the individual justices is almost as extensive.[10]

Probably the greatest reason for the lack of research on Florida's Supreme Court is the natural tendency not to tamper with courts. Research is inhibited by the traditional ideas that courts are sacred and impervious institutions that dispense justice according to unquestionable standards, and that if their workings are exposed somehow their mysterious power will be unveiled for all to see. Contrary to this tendency, however, has been the long-standing fashion in political science circles (now gaining prominence in legal circles) to view the United States Supreme Court as a policy-making organ. The predominant theory is that the Court does take an active part in the political process; and, as an active agent, it is peculiarly subject to scrutiny. We think that state courts, as well, make policy and therefore should also be closely analyzed.[11] To view courts as partici-

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BECKER, POLITICAL BEHAVIORALISM AND MODERN JURISPRUDENCE (1964).

9. The superficial histories are Whitfield, *Political and Legal History of Florida*, 1. F.S.A. lxi, lxxxiii-lxxxviii (1943); Buford & Roberts, *Supreme Court History*, 2 FLA. DIG. v (1955); and a pamphlet, "Supreme Court of Florida" (Pacyna ed.). Studies of the selection process are BASHFUL, THE FLORIDA SUPREME COURT: A STUDY IN JUDICIAL SELECTION (1958); and Parsons, *The Selection and Tenure of Florida Supreme Court Judges*, 9 U. MIAMI L.Q. 271 (1955). All of these works except the latter were either written by a Supreme Court Justice, written for the Court, or approved by the Court before publication.

10. In 1952 a four-volume work on Florida was published: DOVELL, FLORIDA: HISTORIC, DRAMATIC, CONTEMPORARY. This purported to be a comprehensive treatise of Florida history. Two of the volumes were devoted to histories of important Florida families and personalities. All of the justices then sitting on the Florida Supreme Court except one, Justice Glen Terrell, were omitted from the book.

11. For many examples of policymaking by the Florida Supreme Court see Dickinson, Florida Judges and the Warren Court 152 *et seq.* (1964) (unpublished thesis in Florida State University Library). A fundamental example of such political

pants in the political process is repugnant to many judges. It hardly makes sense, however, to analyze the policy decisions of a governor or attorney general for harmony with the "public good" or "public interest" and then not to make a similar analysis (that is, examination of the individual justice's position) when the same individual becomes a member of the judiciary. A judge who makes decisions having an impact on the community (as all decisions do) should be no more immune from scrutiny than the executive.

Whatever the reason for the paucity of scholarship concerning the Supreme Court of Florida, this study attempts a first step on the path toward filling the gap. The primary objective is to provoke a scholarly discussion on the Florida Supreme Court, which will lead to a greater understanding of that important decision-making body.[12]

II. Patterns of Disagreement Among Florida Supreme Court Justices, 1964 & 1965 Terms

A. *The Behavioral Study—Methodology and Background*

Our statistical analysis of the Florida Supreme Court covered all cases adjudicated during the 1964 and 1965 terms.[13] These terms were selected because the membership of the Court was stable during that

judicial decisions was the decision by the Florida Supreme Court to create the integrated Florida Bar. See Petition of Fla. State Bar Ass'n, 40 So. 2d 902 (Fla. 1949).

12. Thus, this study of the 1964-1965 terms uses statistical methods to probe the patterns of decision-making. Appendix A provides a more extensive discussion of methodology. Appendix B is an outline of the common characteristics of the justices on the present court.

13. These cases were reported in *Southern Reporter*, 2nd Series, vols. 159-182. Memorandum decisions, those with no opinions and no justices recorded, were excluded because of impossibility of issue classification and of knowing which justices participated in which decisions. The impact of excluding these decisions from analysis makes suspect any generalizations about the over-all pattern of decisions in any one issue area. However, this does not affect this study for at least several reasons. First, most of this work is directed to *comparative* differences among the justices of the Court. Hence only "controversial" cases (cases in which there were one or more dissents) were used in most analyses and since Memorandum opinions are all unanimous the exclusion of these does not "bias" our sample. Where the total of cases (non-Memorandum "controversial" and unanimous cases) was used it was to determine over-all percentage of dissents, collectively and individually, and would probably not be much affected by the necessary exclusion of Memorandum decisions since we would be using the same cases for all the justices. Certainly the numerator of the dissent percentage fraction would not be affected at all since the Memorandum cases contain no dissents.

Of course, non-Memorandum per curiam decisions (which list the participants), both unanimous and nonunanimous, were included in the analysis.

period, consisting of, in order of seniority, Justices Thomas, Roberts, Drew, Thornal, O'Connell, Caldwell, and Ervin. For a short composite background discussion of the justices see Appendix B. The study involved an analysis of some 677 decisions although it must be realized that each justice did not participate in all decisions.

A "controversial" case, as the term is used here, is one in which there were one or more dissents. Since retired justices and lower court judges sometimes participate in Florida Supreme Court decisions, there were a very few controversial cases in which the only dissent was of the "outsider" and in which none of the seven present Supreme Court Justices dissented. Nevertheless, these cases were counted as "controversial" cases.

In analyzing the cases we used the fifteen categories of issues used by Stuart Nagel in a judicial behavior study.[14] As the analysis progressed we found that only five issue categories appeared with sufficient frequency in Florida Supreme Court cases to merit separate analysis. These were: (1) criminal cases, (2) tax (and bond) cases, (3) tort cases (nonemployee injury), (4) employee injury cases, and (5) supervision of Bar cases.[15] The first four of these categories could be correlated with ideology. It was assumed that a "liberal" decision was for the defense in criminal cases, for the government in tax cases, for the plaintiff in tort cases, and for the workman in employee injury cases. Vice-versa was considered "conservative." In the context of this study, these assumptions can be justified on several grounds. First, there is agreement that voting *consistently* in any one of the above patterns indicates the respective ideological label given them.[16] Ideology may not be apparent in any one given case, but when a unidirectional pattern is found over a large number of cases involving certain issues, ideology is probably one of the operative variables. But in a deeper sense, the statistics are presented independently of the "conservative" and "liberal" labels given them and the reader may draw his own conclusions.[17] The main value of our statis-

14. See Nagel, *Ethnic Affiliations and Judicial Propensities*, 24 J. POLITICS 92 (1962).

15. The fifth category, supervision of Bar cases, was not used by Nagel but was considered because it was one of the most numerous types of cases heard by the Florida Supreme Court. Bond cases were added as part of the tax cases, although it is not known whether Nagel included them in his definition of tax cases.

16. This is also the way they were categorized by Nagel. Supervision of Bar cases could not be clearly classified as involving ideological issues, although any one case might. At first glance, holding for the defendant in a lawyer discipline case might seem "liberal," but the Bar cases could also be analogized to business regulation cases in which event holding for the defendant would be "conservative." For this reason no statistical analysis of the Bar cases is presented.

17. Heretofore, certain words have been setoff with quotation marks to

tics is to show *patterns* of decision-making not readily observable from the (usual) reading of *selected* cases. Indeed, some of these patterns were not even observable when the raw data was gathered during the preliminary analysis of each case and only became evident when the issues were separately classified and finally tabulated.

The types of opinions of the Florida Supreme Court can be conveniently summarized as follows:

(1) *Memorandum*—these cases included no opinion and no list of justices participating. Therefore, they were excluded from analysis.

(2) *Opinion*—all of these, short or long, *per curiam* or not, were analyzed.

(a) *Classified* (or categorized), as discussed above, into five categories. Classified cases were either controversial (one or more dissents) or unanimous.

(b) *Unclassified*—all cases other than criminal, tax, tort, employee injury, or Florida Bar discipline cases were not classified as to issue but were counted and distinguished as to whether controversial or unanimous.

Our focus in this study, as will be seen, is on the classified non-unanimous (controversial) decisions. For further discussion of methodology see Appendix A and also relevant portions of the text following.

B. *Analysis of Florida Supreme Court Decision Patterns, 1964 & 1965 Terms*

Of the 677 nonmemorandum cases analyzed, 125, or 18.4 per cent, were controversial cases, that is, contained at least one dissent. The following chart shows the order of percentage of dissent for the seven justices based on the ratio of the number of dissents to the number of controversial cases participated in:

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indicate a special meaning. For stylistic purposes the quotation marks will be omitted in most instances in the remaining text. These words include "liberal," "conservative," and "controversial." We emphasize that these words continue to be used in the special way defined even though quotation marks are omitted.

TABLE I

PERCENTAGE OF DISSENTS IN CONTROVERSIAL (NONUNANIMOUS) CASES PARTICIPATED IN, 1964 & 1965 TERMS

Justice	Number of Controversial Decisions Participated In	Number of Dissents	Percentage of Dissents
Thomas	97	41	41.2%
Caldwell	114	39	34.2%
Ervin	87	24	27.5%
O'Connell	103	26	25.3%
Thornal	104	26	25.0%
Drew	116	24	23.3%
Roberts	110	25	22.7%

Thus, Justice Thomas, during this two-year period, was dissenting almost twice as much as Justice Roberts in controversial cases participated in. A further analysis, showing the percentage of dissents in the four kinds of cases classified as ideological, is more meaningful. When these types of cases were isolated the comparative dissenting percentages of the justices were slightly different:

TABLE II

PERCENTAGE OF DISSENTS IN CONTROVERSIAL CRIMINAL, TAX, TORT, AND EMPLOYEE INJURY CASES PARTICIPATED IN

Justice	Number of Controversial Criminal, Tax, Tort, and Employee Injury Cases Participated In	Number of Dissents	Percentage of Dissents
Caldwell	57	26	45.6%
Thomas	44	16	34.3%
Drew	56	18	32.1%
O'Connell	49	15	30.6%
Ervin	44	9	20.4%
Roberts	50	10	20.0%
Thornal	48	8	16.6%

It appears, then, that Justice Caldwell dissented nearly three times as often as did Justice Thornal in ideological controversial cases. This data, of course, does not reveal the direction of dissent. To gauge directional patterns of dissent we will now examine the four ideological categories separately.

Criminal Cases. In criminal cases, as mentioned above, deciding

for the defendant was considered liberal. There were eleven criminal cases with one or more dissents (controversial cases) and the Court decided for the defendant in three of these cases. Thus, the Court decided 27.2 per cent liberal in controversial criminal cases. The individual justices are ranked in descending order of liberalism in controversial criminal cases. A liberal decision would come about in one of two ways: either joining with the majority when the Court held for the defendant or dissenting when the Court held for the state:

TABLE III

CONTROVERSIAL (NONUNANIMOUS) CRIMINAL CASES

Justice	Number of Liberal Decisions	Number of Criminal Nonunanimous Decisions Participated In	Liberal Average
Thornal	5	7	71.4%
Roberts	5	9	55.5%
Ervin	3	6	50.0%
Drew	3	9	33.3%
Thomas	3	10	30.0%
O'Connell	2	10	20.0%
Caldwell	2	11	18.1%

Although the smallness of the sample must be kept in mind, this table shows a spread from 18.1 per cent liberal (Justice Caldwell) to 71.4 per cent liberal (Justice Thornal). Since the Court actually decided 27.2 per cent liberal in controversial criminal cases, it can be seen from Table III that only Justices O'Connell and Caldwell were below the Court's liberalism average in these cases.

A more sophisticated insight into the decision patterns is gained by examining the voting patterns of Justices Thornal and Caldwell (the liberal and conservative poles in controversial criminal cases) in more detail than shown in Table III. Justice Thornal went along with the majority of the Court in every controversial case in which he participated[18] which held for the criminal (three cases). On the other hand, out of four controversial criminal cases holding for the state, Justice Thornal dissented twice. Conversely, Justice Caldwell

18. Hereafter, for stylistic purposes, we will sometimes exclude the words "in which he participated." Whenever statistics of a justice's performance are presented, it can be assumed that the data is derived only from the cases *in which he participated.* For example, the next line in the text (concerning Justice Thornal) reading in part, "out of four controversial criminal cases holding for the state" can be assumed to mean "out of all four controversial criminal cases in which he participated holding for the state."

went along with the majority in every one of the split decisions holding for the state (eight in which he participated). Of the three controversial cases holding for the criminal, Justice Caldwell dissented once. The complexion of the decision-making pattern seems clear here with respect to the justices at the two poles; neither justice *ever* deviated from the majority in a split decision when the majority held in favor of their respective liberal or conservative positions. And moreover, there was no hesitation to maintain consistency by dissenting from the majority when it decided against the respective ideological patterns shown.

Tax Cases. Cases involving tax and bonding issues were also prominent among those decided by the Florida Supreme Court. In these cases a liberal decision was considered one that held for the governmental taxing authority. Since the taxing cases all involved ad valorem taxes or bonds to be repaid by ad valorem taxation (there is no state income tax in Florida), this label would seem to have some validity. In controversial (or split) tax cases the Court held for the taxing authority seven out of nine times for a "liberalism" score of 77.7 per cent. The individual justices scored as follows:

TABLE IV

CONTROVERSIAL (NONUNANIMOUS) TAX CASES

Justice	Number of Liberal Decisions	Number of Controversial Tax Cases Participated In	Liberal Average
Roberts	8	8	100.0%
Ervin	5	5	100.0%
Thornal	6	9	66.6%
Thomas	4	7	57.1%
Caldwell	3	9	33.3%
Drew	1	9	11.1%
O'Connell	0	8	0.0%

Again, while reading the following observations the reader should keep in mind the small number of samples. Table IV shows that controversial tax cases produced the most extreme split possible in the Florida Supreme Court from 0.0 per cent liberal (Justice O'Connell) to 100 per cent liberal (Justices Roberts and Ervin). Since the Court's liberalism average is 77.7 per cent, it can be seen that Justices Roberts and Ervin are the only justices above that average. These justices, it will be remembered, were also above the Court's liberalism percentage in controversial criminal cases.

Again, more understanding is gained by examining the voting

patterns of the justices on both extremes in more detail than is included in the table. Justice Roberts went along with the majority every time it decided liberal (six cases in which he participated) and dissented in every case it held against the government (two cases). Justice O'Connell's pattern, it is interesting to note, is exactly the reverse. Justice O'Connell participated in six liberal split tax cases and dissented from the majority in every one of them. He participated, as did Justice Roberts, in two conservative nonunanimous tax decisions but, unlike Justice Roberts, he joined the majority in both of them. Justice Drew, who also had an extremely low liberalism score, dissented in six out of seven liberal tax cases and went along with the majority every time it decided conservatively in such cases. Justice Ervin joined the majority all three times it held liberally and dissented in the two cases it held conservatively. Again we see the pattern of the polar justices never deviating from the majority when the majority held in favor of their respective liberal or conservative patterns. Again, there was no hesitation to dissent from the majority when it decided contrary to their respective positions. When a break in the ideological pattern is found in the polar justices, as in the case of Justice Drew, it involves joining the majority in a contrary case, not dissenting in a favorable split decision.

Tort Cases. All nonemployee-injury tort cases of the 1964-1965 terms were examined. A decision for the plaintiff was considered liberal and one for the defendant was considered conservative. There were nineteen nonunanimous tort cases and the Court held for the plaintiff in eleven of these for a 57.9 per cent liberal average. The individual justices ranked as follows:

TABLE V

NONUNANIMOUS TORT CASES

Justice	Number of Liberal Decisions	Total Number of Tort Cases Participated In	Liberal Average
Ervin	15	18	83.3%
Thomas	13	17	76.4%
Roberts	12	17	70.5%
Drew	13	19	68.4%
Thornal	11	17	65.2%
O'Connell	10	17	58.7%
Caldwell	3	19	15.7%

This table shows a wide difference between the decision patterns of the individual justices. The descending order of liberalism it will be noted, is basically similar to that revealed by the analysis of criminal

and tax cases. Justice Caldwell is the only justice who scored below the Court percentage of 57.9 per cent liberal. Because seven of these cases involved exactly the same issue, and were apparently decided simultaneously, with only Justice Caldwell dissenting, a fairer sample might treat these seven cases as one. Considering these seven cases as one, the Court decided liberal in five of thirteen decisions or in 38.3 per cent of the nonunanimous tort cases. The individual justices decided as follows:

TABLE VI

NONUNANIMOUS TORT CASES (ADJUSTED)

Justice	Number of Liberal Decisions	Total Number of Split Tort Cases Participated In	Liberal Average
Ervin	9	12	75.0%
Thomas	7	11	64.6%
Roberts	6	11	54.5%
Drew	7	13	53.9%
Thornal	5	11	46.4%
O'Connell	4	11	36.3%
Caldwell	3	13	23.0%

This table shows the same liberal ranking but, because seven of the liberal cases were combined, the averages of the justices are more conservative, except for Justice Caldwell who dissented in those cases. Justices O'Connell and Caldwell were the only justices who were below the Court's 38.3 per cent liberal average, thus following the pattern established in previous categories. A more detailed analysis of the patterns of the polar justices (not shown in Table VI) gives more insight into the very real divergencies. Justice Ervin, the most liberal justice in tort cases, voted with the majority in every split decision that held for the plaintiff (five in which he participated). On the other hand, he dissented in most of the split decisions holding for the defendant (four out of seven). Justice Caldwell, the conservative leader in tort cases, dissented in most tort cases holding for the plaintiff but voted with the majority seven out of eight times when they held conservatively (for the defendant).

Employee Injury Cases. The last classification of cases in which it was hypothesized that ideological factors would produce consistent patterns involved employee injury, mostly workmen's compensation, cases. From the patterns established in the above analyses, in order for there to be a consistent ideological pattern, we would expect Justices O'Connell and Caldwell to decide conservatively; conversely,

we would expect Justices Roberts and Ervin to be the most liberal. As explained earlier, a liberal decision was considered one deciding for the employee and vice versa was considered conservative. The data, for the most part, confirm these hypotheses:

TABLE VII

NONUNANIMOUS EMPLOYEE INJURY CASES

Justice	Number of Liberal Decisions	Total Number of Employee Injury Cases Participated In	Liberal Average
Drew	18	19	94.7%
Ervin	12	15	80.0%
Thornal	12	15	80.0%
Roberts	9	16	56.2%
O'Connell	5	14	35.7%
Thomas	3	10	30.0%
Caldwell	2	18	11.1%

Since the Court decided 71.4 per cent for the workman in these cases, Justices Caldwell and O'Connell follow their previously established pattern by deciding more conservatively than the Court. Justice Ervin follows his pattern of deciding more liberally than the Court. Justice Roberts, however, did not follow his pattern, voting more conservatively than the majority in employee injury cases. Note, though, that he did not deviate much from his pattern in the other categories of cases since he maintained his position vis-à-vis Justices O'Connell and Caldwell. That is, even though not among the liberal leaders in employee injury cases, he decided considerably more liberally than did Justices O'Connell and Caldwell.

Again, a more closeup look at the pattern of the polar justices than is provided in the table is revealing. Justice Drew, the liberal leader in split decision employee injury cases, voted with the majority fifteen out of sixteen times when it decided for the workman and dissented all six times when the majority voted against the workman. Justice Ervin followed the majority in all fifteen unanimous cases holding liberally (for the workman). Justice Ervin followed the majority in all fifteen cases holding liberally (for the workman). On the other hand, he dissented in one out of four decisions in which the Court held against the workman. Justice Caldwell, the conservative leader, stayed with the majority every time it held against the workman (five cases in which he participated). On the other hand, when the Court held for the workman he dissented in eleven out of thirteen cases. This clearly shows a strong unidirectional decisional pattern on the part of Justice Caldwell.

When the nonunanimous cases of all four categories are totaled an over-all decisional pattern is seen:

TABLE VIII

NONUNANIMOUS CRIMINAL, TAX, TORT, AND EMPLOYEE INJURY CASES

Justice	Number of Liberal Decisions	Number of Decisions Participated In	Liberal Average	Per Cent of Deviation From Court Average (60% liberal)
Ervin	35	44	79.5%	+19.5%
Thornal	34	48	70.8%	+10.8%
Roberts	34	50	68.0%	+ 8.0%
Drew	35	56	62.5%	+ 2.5%
Thomas	23	44	52.2%	— 7.8%
O'Connell	17	49	34.6%	—25.4%
Caldwell	10	57	17.5%	—42.5%

This table indicates that there is a wide spectrum of voting patterns. No sharp split into two distinct liberal and conservative wings appear. Rather, the center of the Court is scattered from a deviation of 10.8 per cent on the liberal side (Justice Thornal) to 7.8 per cent on the conservative side (Justice Thomas) On both sides of this center the deviations increase sharply. Justice Ervin, the liberal leader, was more than four times as likely to vote liberally in a classified nonunanimous case than was Justice Caldwell, the conservative leader. The real wings are composed of Justice Ervin on the left and Justices O'Connell and Caldwell on the right. Justice Ervin is the "liberal" of the Court, deciding 19.5 per cent more liberally than the Court did in the four kinds of cases. The conservative side of the Court deviates even more from the Court's decision percentage. Justice O'Connell decided 25.4 per cent more conservatively than did the Court. But Justice Caldwell deviates to a far greater extent, deciding 42.5 per cent more conservatively than the Court. Thus, there are actually two conservative wings on the Florida Supreme Court. Justice O'Connell forms one wing, deciding 17.6 per cent more conservatively than the justice next closest to the center of the Court (Justice Thomas) and Justice Caldwell, deciding 17.1 per cent more conservatively than Justice O'Connell, forms the other.

With the above information on the direction as well as number of dissents the relative position of the justices on a left-right spectrum can be depicted:

TABLE IX

RELATIVE POSITION OF JUSTICES OF FLORIDA SUPREME COURT — BASED ON CRIMINAL, TAX, TORT, AND EMPLOYEE INJURY CASES (1964 AND 1965 TERMS)

(Deviations expressed in percentages)

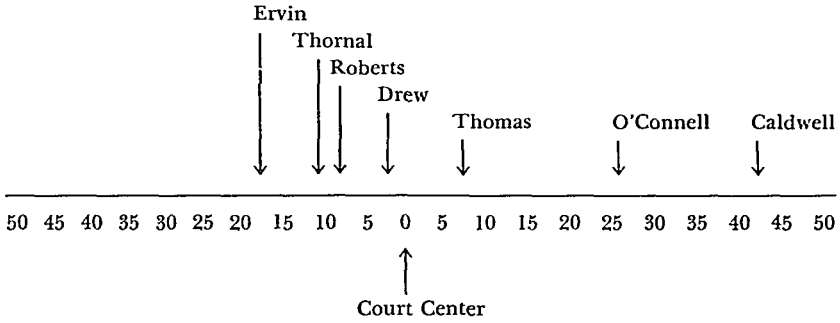

Table IX graphically shows the relative positions of the justices with deviations extending further on the right (conservative) side.

The question naturally arises about voting blocs on the Florida Supreme Court. Herman Pritchett found remarkably cohesive dissent blocs in the United States Supreme Court, 1939-1941 terms.[19] He was, however, investigating a court with more sharply diverging and distinct wings than the Florida Court. An analysis of the dissenting blocs in criminal, tax, tort, and employee injury cases shows no such clear-cut pattern for the Florida Supreme Court:

TABLE X

AGREEMENTS AMONG FLORIDA SUPREME COURT JUSTICES IN CRIMINAL, TAX, TORT, AND EMPLOYEE INJURY DISSENTS, 1964 AND 1965 TERMS

Justice	Caldwell	O'Connell	Thomas	Drew	Thornal	Roberts	Ervin
Caldwell	(17)	10	6	5	1	1	0
O'Connell	10	(1)	8	8	7	1	1
Thomas	6	8	(3)	2	5	1	3
Drew	5	8	2	(5)	3	2	3
Thornal	1	7	5	3	(2)	0	1
Roberts	1	1	1	2	0	(4)	4
Ervin	0	1	3	3	1	4	(7)

Numbers with parentheses indicate lone dissents. Note that Justice Caldwell is far ahead with seventeen lone dissents. Justice Ervin, the

19. Pritchett, *Division of Opinion Among Supreme Court Justices*, in JUDICIAL BEHAVIOR: A READER IN THEORY AND RESEARCH 319 (Schubert ed. 1964).

leader of the other wing, is second with seven lone dissents. Although there is no clear-cut dichotomy, certain patterns emerge. Since, as our above analysis indicated, Justice Thomas was slightly more conservative than the Court and Justice Drew slightly to the liberal side, they represent the dividing point of the right and left sides of the Court. It will be noted that most of the dissent agreements of Justices Caldwell, O'Connell, and Thomas are on the right side of the Court, whereas most of the dissent agreements of Justices Roberts and Ervin are on the left side of the Court. Justices Drew and Thornal, slightly on the liberal side of the Court, share more dissents with the conservative side of the Court. This is probably for two reasons. First, the conservative justices of the Court participated in more cases and dissented more than most of the liberal justices and thus there is a natural tendency toward more dissent agreements with these members of the Court. But, more importantly, the dissent agreements must be explained in terms of the lack of any real ideological consistency on the part of the center of the Court. Apart from the conservative wings of Justices O'Connell and Caldwell and the liberal wing of Justice Ervin, there is much cross-voting on both sides leaving no clear-cut block patterns.

III. SUMMARY

A. *The Findings of This Study*

To summarize the main findings which the statistical research has disclosed:

(1) Justice Thomas leads in the percentages of dissents in all nonunanimous decisions participated in (Table I). However, when we isolate the four categories of hypothesized ideological cases (criminal, tax, tort, and employee injury cases), the result is different. Justice Caldwell is the leading dissenter in these "ideological" cases (Table II).

(2) Justice Ervin has a higher liberal average than the Court in every category. In three of the four categories (tax, tort, and employee injury cases) he is either the most liberal or next to the most liberal. In criminal cases he is the third most liberal and his position may possibly be explained by the great number of times he did not participate in criminal cases, perhaps because of his prior position as attorney general. (See Tables II through VII).

(3) Justices O'Connell and Caldwell were always on the conservative side on all four issues, one of the two being the conservative leader in each issue. Generally, Justice Caldwell

was more conservative than Justice O'Connell. (See Tables II through VII). This seems to correlate with Justice Caldwell's philosophy as often expressed off the bench.

(4) The other justices showed no consistent liberal or conservative pattern pervading all four categories. Perhaps the most erratic is Justice Drew who shows definite unidirectional voting patterns in individual categories. In tax cases, Justice Drew had an 11.1 per cent liberal average (Table IV), but in employee injury cases he had a 94.7 per cent liberal average (Table VIII). This cannot be explained on the basis of a difference of *Court* attitude in tax and employee injury cases, since the Court decided approximately the same way in both types of cases (more than 77 per cent liberal). This does not mean that ideology had no part in Justice Drew's consistent patterns in these two types of cases. It may mean, however, that our liberal and conservative labels are too simple to explain Justice Drew's behavior. For example, Justice Drew could feel strongly for the workman and against taxes regardless of the inconsistent ideological labels we chose to give to those two positions. Subsequent studies to see if Justice Drew's pattern continues in these two types of cases appear especially desirable since the categories, taken individually, do not contain many samples.

(5) No clear-cut dissent bloc pattern appears, although certain tendencies are manifest. The reasons for this are adequately discussed above and are consistent with the findings.

(6) The final ideological pattern shows Justice Ervin as the "left wing" of the Court and two "right wings" consisting of Justice O'Connell and, substantially further to the right, Justice Caldwell. The center of the Court is made up of Justices Thornal, Roberts, Drew, and Thomas in descending order of "liberalness."

B. *The Findings in the Context of the Total Court Posture*

When we speak of a "left" and "right wing" of the Court, on the basis of the above analysis, it must be realized that these terms are only used *comparatively*. A comparative analysis of the justices of any one court must be based mainly on an analysis of dissenting opinions in order to show how they differed. The analysis here, moreover, only included the four frequently recurring categories of cases in which ideology might be hypothesized to have had an influence. However liberal or conservative a court is on these dissenting opinions, the total posture of a court can only be measured by an analysis of all

its decisions, both controversial and unanimous. This caveat is borne out when we compare the Court's performance in dissenting opinions with its performance in unanimous decisions:

TABLE XI

COMPARISON OF COURT POSITIONS IN CERTAIN CONTROVERSIAL AND UNANIMOUS CASES

Issue	Liberal Controversial Cases	Liberal Unanimous Cases
Criminal Cases	3 of 11 or 27.2%	13 of 65 or 20.0%
Tax Cases	7 of 9 or 77.7%	18 of 27 or 66.6%
Tort Cases	11 of 19 or 57.9%	12 of 25 or 48.0%
Employee Injury Cases	15 of 21 or 71.4%	23 of 48 or 47.9%

Note that in all four categories of cases the Court had a lower liberalism average in unanimous cases than in controversial cases. Indeed, in three out of four of the categories (criminal, tort, and employee injury cases) the Court was below 50 per cent liberal in the unanimous cases while being above 50 per cent liberal in the nonunanimous (controversial) cases. Thus, the more inclusive Court posture is more conservative than an analysis of the nonunanimous cases alone would indicate. Even Table XI does not indicate the total Court posture since Memorandum opinions, which were impossible to tabulate, were not included.[20]

The main thrust of our behavioral analysis, then, was not in showing the Court's position on any given issue, but in analyzing the relative position of the justices. That analysis revealed a significant split on the Florida Supreme Court, apparently the result of divergent philosophies.

C. *Conclusion*

It should be clear that this study, as any behavioral analysis, is limited in scope in that it is directed to a specific area of inquiry. The value of such studies, however, is that, not only do they shed light within their own limited area of concern, but they also relate easily to other studies (both behavioral and other) in order to produce greater illumination both extensively within a broader jurisprudential scheme and intensively as a means of constant correction

20. Also, several types of cases were not classified as being liberal or conservative. The discussion in the text is not meant to show the total Court posture, which would be a foolish venture considering the evidence put forth, but rather to point out the impossibility of accurately projecting the nonunanimous decisions.

within the more specific area of research. It seems, therefore, that an important feature of any method of investigation is its capacity for accommodation to other analyses. Thus, it is felt that further study of the present area is needed, and the present study anticipates future investigation to confirm, reject, or amplify these findings.[21] Perhaps, for example, larger studies over the long-term may point to recurring patterns of behavior.[22]

Yet, given such a set of recurring behavior patterns, the question remains of what value is such knowledge? To an attorney practicing before the Court the value is immediately apparent. It is to know more precisely what was previously only a primitive guess:[23] which justices tend to decide which way in which cases (or which justices show no clear pattern); which justices can more easily be persuaded in certain kinds of cases. Thus, the predictive utility of such knowledge may have considerable influence on the attorney's approach. It is also possible, of course, that knowledge of the direction in which the judicial body appears to be moving may encourage the early settlement of disputes by preventing an issue from reaching the Court at all.

From the scholar's perspective, the studies help to answer the question why the Court decides in a certain way, even though the explanation is by no means complete. Any court, of course, is composed of individuals, and judicial decision-making can be understood only in terms of the behavior of individual justices. Ultimate reasons for a decision by an individual justice are likely buried deeply in his psyche—perhaps beyond the scope of man's present ability to comprehend. This need not prevent, however, the presentation and interpretation of the information which is amenable to existing techniques. After all, before the reasons behind patterns of decision can even be speculated upon, those patterns must be revealed. Thus, the present study reveals how individual justices decided in certain cases over a two year period. The data, however, does not show the total Court posture (although it clearly helps to describe it), and the study offers no explanation of the motivation of any individual justice.

21. For example, a future study probing the relation between the Court and Florida Industrial Commission (which handles workmen's injury cases) might reveal that the Court has deference for that agency. The employee injury findings of this study would then be qualified by or at least interpreted in the light of this new information.

22. Any such pattern would of course be affected by such intervening variables as changes in court membership, or major changes in workload or jurisdiction (e.g., the proposal to remove exclusive jurisdiction over workmen's compensation from the Florida Supreme Court).

23. Incidentally, could even the most astute of courthouse watchers have "guessed" the position of Justice O'Connell on the "liberal—conservative" chart (Table IX)?

Since the present purpose is only to provide an introduction to the Supreme Court of Florida, it seems appropriate to conclude with a few significant questions, the answers to which are beyond the scope of this study:

(1) To what extent will studies such as these have an impact on the future decisions of the Court? When the judge is able to find out how he decides, will the data "feedback" encourage him to decide in accordance with past trends?[24] Or, on the other hand, will such feedback motivate the judge to reject his "position" on the scale and strike out in new directions contrary to past trends? A related question is whether the behavioralist materials will even be read by the judges.

(2) Most behavioralist studies concentrate on the internal workings of the court—oriented to psychology or small-group sociology. But how can the *external* impact (on lower courts, agencies, lawyers, and so forth) of the Court's decisions be assessed? Once the probable impact is known, to what extent should it enter into the judge's decision?[25]

(3) In its most powerful roles the Supreme Court of Florida can interact with an administrative agency, act as the supreme authority over the purely judicial arena, give advisory opinions to the Governor, review the acts of the legislature, and regulate the legal profession. To what extent would an analysis of the Court in one of these roles reveal the preference for (or against) the values of the group before it? That is, would an in-depth analysis of the Court in a particular role show a special or peculiar pattern of decisions in that special context?

(4) To what extent will future studies of the Court qualify, affirm, or improve upon findings of this study? More specifically, would in-depth studies of backgrounds of the individual justices (e.g., writings, readings, interests, and philosophies) shed light on the motivation behind the decisions we have recorded? Would a statistical study over a longer period (say, 1960-1970) providing a larger sample show patterns of decision different from those found here?

These questions suggest further work, which if undertaken would add to the store of knowledge on how courts in fact decide. Such

24. On the possible loss of judicial creativity due to feedback see STONE, SOCIAL DIMENSIONS OF LAW AND JUSTICE 694 (1966).

25. See Miller, *Impact Analysis in Supreme Court Decisions*, 53 GEO. L.J. 365 (1965).

studies, of course, since they are not value-oriented, do not directly suggest what outcomes are to be preferred; but they may lay the foundation for a critical evaluation of a given court's behavior. Criticism of the correctness of judicial decisions, nonetheless, must be largely based on the observer's particular values. The present nonvalue-oriented study is in no way intended to minimize the importance of value-theory (how courts should decide), which occupies a place of at least equal importance in jurisprudential theory.

APPENDIX A

A NOTE ON THE BEHAVIORAL METHOD AND THE METHODOLOGY OF THIS STUDY

"Behavioralism" is a relatively recent development in the social sciences. This is a broad term that cuts across many traditional disciplines and can best be defined in a broad sense. The behavioralists tend to minimize methods of analysis considered traditional by the social sciences and try to maximize quantitative analysis, relying heavily on the scientific method, which is traditional in the physical sciences. Probably "behavioralism" is best described as a method and not a field of study in itself.

Behavioral analyses are especially new as applied to *judicial* behavior. Most writers[1] agree that judicial behavioralist research and papers have been largely the work of political scientists and not law scholars. One recent book on judicial behavioralism completely separates jurisprudence and behavioralism and even refers to all judicial behavioralist studies under the broad rubric of "political behavioralism."[2] We believe that judicial behavioralist work, whether carried out by political scientists or by law scholars, is a part of jurisprudence since jurisprudence embraces not just the philosophy of law in the narrow sense but also descriptions of the legal processes.

Perhaps the best way to understand judicial behavioralism, after the general statement above, is to get some more specific idea of the kind of studies being conducted. If analysis of the methodology as used in the following studies is stressed, it is because methodology is of critical importance in behavioral studies. One does not get the flavor of what the behavioralists are doing unless one is concerned with their methodology. The methodology of the behavioralists is their argumentation: X is not true because of history or personal experience or because other hypotheses are logically absurd, but rather because the scholar included all samples, controlled all variables, tested all alternative hypotheses, and so forth.

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1. *E.g.*, BECKER, POLITICAL BEHAVIORALISM AND MODERN JURISPRUDENCE 1-39 (1964); SCHUBERT, JUDICIAL BEHAVIOR: A READER IN THEORY AND RESEARCH 2-3 (1964); STONE, SOCIAL DIMENSIONS OF LAW AND JUSTICE 689 (1966). Although these writers, and others, agree that political science is the father of judicial behavioralism, they all seem to assume that the *legal* realists had something to do with behavioralism for whenever they mention a jurisprudential school in connection with judicial behavioralism, even to minimize such a connection, it is the realist school.

2. See generally BECKER, POLITICAL BEHAVIORALISM AND MODERN JURISPRUDENCE (1964). The very title implies separation from even *modern* jurisprudence.

One type of judicial behavioralist study could be called a "background" type study. This type of study is predicated on the assumption that ideology is influenced by background and this ideology, in the case of a judge, affects decision-making.[3] Stuart Nagel has conducted several "background" type studies, including studies testing the effect of religious,[4] nationality,[5] and prior political party[6] affiliations on judicial decision-making. A brief examination of only one of these studies is sufficient for this paper since their methodologies are similar. In probing the effect of judges' religious differences, Nagel examined all nonunanimous cases in fifteen categories of law in all state supreme courts and the United States Supreme Court. Nonunanimous cases were used in order to gauge the extent to which differences in decision-making correlated with differences in religious background. These fifteen categories of law were chosen because they could be classified as involving considerations affected by a "liberal" or "conservative" ideology.[7] Each justice was given a decision percentage for each category of case. For example, a justice who decided for the defense in thirty out of forty cases would be assigned a decision percentage of .75. Each court would also have a collective average decision score for each category of cases and each justice would be above, at, or below the average in that category. Nagel hypothesized that Catholic judges would take the "liberal" position more than Protestant judges, except in divorce cases. To summarize briefly Nagel's results, this was found to be the case in eleven out of the fifteen case categories, in five of them to a statistically significant degree. In the other four cases, the number of judges participating and the differences were small so that these unexpected results were far from being statistically significant.

Nagel has also used questionnaires designed to gauge a judge's "liberalism" or "conservatism" and, using methodology similar to the above, found substantial differences in decisional patterns which correlated with the judge's ideology as indicated by the questionnaire.[8]

We have rejected the "background" type of behavioralist approach for our study of the Florida Supreme Court for several reasons. First, the methodology employed in those studies is designed for analysis of many courts (Nagel used all supreme courts) in order to find trends and test large scale hypotheses. For instance, Catholic judges generally may tend to decide "liberal" but any one Catholic judge might decide very differently. To test the effect of background on judicial decision-making a large sample of judges (as distinguished from cases) is needed. This objection does not apply to the questionnaire type "background" study but since Nagel did not get a high rate of response to his questionnaires

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3. Of course, "background" had long been proved as a very potent indicator of behavior in the United States — affecting voting for public officials as well as influencing the conduct of public officials once elected. "Background" includes nationality, religious, and regional affiliations. The legal realists are largely to be credited with emphasizing that a judge is influenced by ideology just as a "regular" man is.

4. Nagel, *Ethnic Affiliations and Judicial Propensities*, 24 J. POLITICS 92 (1962).

5. *Ibid.*

6. Nagel, *Political Party Affiliation and Judges' Decisions*, 55 AM. POL. SCI. REV. 843 (1961).

7. One could hardly quarrel with Nagel's classifications for two reasons. First, because they covered a large area of the law and second, because the decisions can be fairly easily categorized as "liberal" or "conservative."

8. See Nagel, *Off-The-Bench Judicial Attitudes*, in JUDICIAL DECISION MAKING 29 (Schubert ed. 1963).

we decided not to send the questionnaires to the Florida Supreme Court.[9] Presumably, Nagel's promise of anonymity, made possible because his was an overall analysis of statistical trends in all the supreme courts, was one of the factors that led to Nagel's getting even the small response he did. This study, on the other hand, is a closeup of one supreme court and justices are identified by name.

Although it was thought invalid to adopt Nagel's entire methodology for this study, we have borrowed some aspects which are appropriate to a study of an individual court. These aspects include his categorization method[10] and his statistical method of analyzing justices according to their average on any given category. We have added comparison, however, of particular justices in terms of "decision scores" while Nagel was concerned instead with comparison of *groups* of certain background types. Another difference is that we have narrowed and modified Nagel's classifications of substantive issues categorized — although we analyzed all cases in the 1964 and 1965 terms. This narrowing (to five issues) was done pragmatically as the actual analysis of cases progressed. The Supreme Court of Florida did not hear other kinds of cases with sufficient regularity to make separate, classified analysis meaningful.

Another type of behavioral study focuses on decision-making patterns within one particular court, without regard to background factors which might cause these patterns. Indicative of this approach is an article by Hermann Pritchett entitled, "Divisions of Opinions Among Supreme Court Justices."[11] In this study Pritchett attempted to analyze voting patterns among United States Supreme Court Justices in 1939 and 1940 through dissenting opinions, which constituted "more than one-fourth of the decisions rendered by the Court."[12] The justices were first ranked in the order of percentage of dissents to total decisions participated in. It was found that the justices who dissented most in one year followed the same pattern the next year. Next Pritchett attempted to find a pattern in dissent by showing the number of times each justice joined each other justice in dissenting opinions. It is sufficient for our purposes to note that he found remarkably cohesive dissenting blocks with little, and in some cases no, overlap. To widen the focus of analysis, Pritchett analyzed the agreement of justices in dissenting cases, whether the individual justice dissented or not. This also yielded very cohesive blocs. Finally, Pritchett developed a left-right spectrum which showed the justices' relative positions in controversial cases. Pritchett's methodology was sound in showing dissent blocs within the court but he was less than specific in showing how these blocs yielded a left-right spectrum. Thus, we adopted his methodology to test for blocs within the Florida Supreme Court, but used Nagel's classifications to test ideological patterns of the justices.

There are at least several other types of behavioral studies that might be applied to the Florida Supreme Court but which were bypassed in this study because of limitations of time and resources.[13] It can be seen that we stressed a com-

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9. Dickinson, even promising anonymity in his study of Florida judges (see note 11 of main text *supra*), had a low response from the judges sent questionnaires. The sample included the Florida Supreme Court justices.

10. See Nagel, notes 4 and 6 *supra*.

11. Pritchett, *Division of Opinion Among Supreme Court Justices*, in JUDICIAL BEHAVIOR: A READER IN THEORY AND RESEARCH 319 (Schubert ed. 1964).

12. *Id.* at 320.

13. At least two are worthy of note. One concerns hypotheses about a court's over-all disposition of certain types of cases. A good example is Tanenhaus,

bination of several behavioral methods of analysis to focus on the Florida Court. Finally, as pointed out in the Introduction, we realized the advantage of studying one court from different perspectives and that some more traditional types of legal analysis might well be appropriate to supplement the several types of behavioral ones.

APPENDIX B

COMMON CHARACTERISTICS OF THE JUSTICES

Searches of the biographies of the justices point up several common characteristics.[1] Their most common points are summarized in the chart. The similarities shown there are substantial. (See following page.)

All justices were appointed to the Florida Supreme Court and did not attain the position through popular election. This has been the general pattern in Florida Supreme Court history with "popular election of justices" really more like appointment for life in practice. All justices are members of the Democratic Party and were nominated by that party. This is consistent with the political pattern of the state, which is mostly Republican in presidential elections and almost solidly Democratic in state local elections (although the Republican Party is now showing considerable vitality in these elections). The legal education of the justices fits into a tight pattern; all received their legal education in Florida at either Stetson or the University of Florida College of Law. The University of Miami Law School is not represented on the Court. Justice Caldwell does not fit the pattern because he apparently did not attend law school. Another common characteristic pointed up by the chart is that of prior occupational background. All justices except Justice Roberts were government attorneys at some period in their career before appointment to the Bench. The most common positions were city attorney and affiliation with the Florida State Road Department. Our chart shows no common occupation when called to be a Supreme Court Justice. Only one justice (Thomas), it will be noted, had prior experience as a judge. This indicates that Florida's governors look elsewhere than the lower court system for Supreme Court Justice appointees, for whatever reasons.

All justices, except Justice O'Connell, were born in North Florida or in the Southern States. Generally, the cultural mores of North Florida are considered similar to that of the Southern States. Justice O'Connell, the exception, was born in West Palm Beach, Florida.

Supreme Court Attitudes Toward Federal Administrative Agencies, 22 J. POLITICS 502 (1960). Tanenhaus' main hypothesis was that because of his analysis of the judicial process (set out in his article) members of the Supreme Court would be inclined to favor administrative agencies (his hypotheses were broken down and included exceptions). Another method of analyzing courts is exemplified in Mott, *Prestige Differentials Among Appellate Courts*, in JUDICIAL BEHAVIOR: A READER IN THEORY AND RESEARCH 287 (Schubert ed. 1964). This unique study quantitatively analyzes appellate court prestige by questionnaires to law school professors; tabulating the number of casebook opinions, citations by other state courts and the United States Supreme Court, and citation with approval. Obviously, prestige as tested here has to do with how well-known a court makes itself as well as how well-liked its opinions are.

[1]Data on the justices was drawn from the sources cited in note 9 of the main text *supra*.

COMMON BACKGROUND CHARACTERISTICS OF THE PRESENT FLORIDA SUPREME COURT

Justice	Original Selection—Appointment or Election	Political Party	Legal Education	Prior Occupational Background*	Place of Birth
Caldwell	appointed	Dem	*apparently* no law degree	att'y, city att'y, Mem Fla H R, Mem Cong, Gov of Fla, Fed Civil Defense adm'r, *Chrm Fla Comm'n on Const Gov't*	Beverly, Tenn
Drew	appointed	Dem	LL B Stetson	*city att'y, Everglades Drainage Dist att'y, Fla Game & Fresh Water Fish Comm'n*	Fargo, Ga
Ervin	appointed	Dem	LL B U Fla	Fla H R clerk, St Rd Dep't Att'y, Sec'ry R R Comm'n, Pub Safety Att'y, *Att'y Gen*	Carabelle, Fla
O'Connell	appointed	Dem	LL B U Fla	att'y, St Rd Bd att'y, *St Racing Comm'n att'y*	West Palm Beach, Fla
Roberts	*appointed*	Dem	LL B U Fla	att'y, businessman, *Vice pres Bank*	Sopchoppy, Fla
Thomas	appointed	Dem	LL B Stetson	att'y, city att'y, *Cir Judge*	Ankona, Fla
Thornal	appointed	Dem	LL B U Fla	*att'y, city att'y, co att'y, St Road Bd member*	Charleston, S C

*Italicized indicates in that occupation when appointed to Supreme Court