STATES AND THE U.S. SUPREME COURT: AN EXAMINATION OF LITIGATION OUTCOMES[1]

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Although many scholars have examined the role state governments play in Supreme Court litigation, few have explored factors affecting the outcomes of their cases. Hence, this study sought to discover if variation in state success could be systematically explained. With the use of cases involving issues of criminal justice decided during the Burger Court era, the importance of two sets of factors, state traits and governmental litigation apparatus, was examined. After controls for the appealing party have been introduced, a model encompassing both sets of factors provides a useful tool for explaining the success of southern states. Given their inherent advantages, however, the success of nonsouthern states is best explained by only one set of factors: state traits.

Recently scholars have raised important questions concerning the role state governments play in U.S. Supreme Court litigation (see Baker and Asperger, 1982; Epstein and O'Connor, 1987; Jordan, 1985; Morris, 1985, 1987; and Ulmer, 1986). Interest, in particular, has centered around criminal rights litigation as this is one of a handful of legal areas in which governments are always involved as primary parties.

Increasing exploration of the relationship between states and the Court is a welcome addition to the study of the judicial process. For far too long, scholars have exclusively focused on the federal government, as represented by the Office of the Solicitor General, rather than the states (see Puro, 1971, 1981; Ulmer, 1985; Segal, 1984; Scigliano, 1971; and Werdegar, 1967–68). This is far from surprising: as students of comparative state politics can well attest, it is extremely difficult to develop generalized models of state activity as so much variance exists among their cultures and political structures.

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Given those constraints, the work on states and the Supreme Court has been remarkably rich. We have learned a great deal about state apparatus for litigating before the Court, the role of attorneys general, and possible factors influencing their success. What we have yet to do, however, is study systematically the effect such factors actually have on litigation outcomes. Hence, emerges our research question: Can we, using factors described in previous research, systematically explain variation in the success rates of states before the high court?

This question is significant for a number of reasons. First, as we have mentioned, a growing body of literature has sought to address this issue, but has done so descriptively (see, for example, Morris, 1987). It is timely, therefore, to test systematically some of the answers that have emerged from previous work.

Second, and relatedly, tremendous variation exists among the success rates of states before the Supreme Court. We have illustrated this phenomenon in Table 1, which depicts states' success and participation rates in cases involving issues of criminal rights before the Burger Court;[2] compare, for example, the success rates of Oregon (92 percent) and Louisiana (17 percent).

The implications of such variation are twofold. For one, it has fueled "judicial" and scholarly debate over the efficacy of state efforts. On one hand, stories (emanating from speeches and interviews with the justices) suggest that states are generally poor litigators (see Baker and Asperger, 1982; Jordan, 1985; and Morris, 1985). This is well exemplified by *Mapp v. Ohio,* 367 U.S. 643 (1961), a case involving the exclusionary rule. During oral argument, a justice asked the attorney representing the state about the applicability of *Wolf v. Colorado,* 338 U.S. 25 (1949). The attorney responded that he did not know anything about *Wolf,* even though it was the leading case in the area![3] Interviews with the justices and other material confirm the Court's general disillusionment with the in-court representation of certain states (see Baker and Asperger, 1982).

The scholarly literature tends to confirm "judicial" speculation, but with some demurrers. Political scientists and legal scholars examining state litigation have indeed found that the states as a group fare poorly when compared with the U.S. government's litigation (Jordan, 1985). Yet, certain states perform better than the solicitor general. Between 1969 and 1981, for example, the solicitor general won 68 percent of his criminal

[2]This table and all analyses that follow include only those states that participated in more than five cases. Although this is somewhat of an arbitrary cutoff point, we could not foresee states participating in less than five cases as providing a reasonable basis for analysis, particularly since the vast majority of those states litigated two or fewer cases. In fact, of the 356 cases litigated by states during this era, the states we included accounted for 85 percent.

[3]Although *Mapp* is an often used example of the ineptitude of state attorneys general, in all fairness to the Ohio attorney, *Mapp* was brought to the Court on First Amendment grounds. It was only in an amicus curiae brief submitted by the ACLU that the exclusionary rule issue was raised.

TABLE 1

States and the Supreme Court, 1969–85 Terms

State	Percentage of Cases Won	Total Number of Appearances
Massachusetts	100%	10
Oregon	92	12
Connecticut	83	6
Michigan	82	11
Tennessee	77	9
California	71	34
New York	71	24
Ohio	62	13
Florida	61	31
Texas	59	17
Alabama	57	7
Virginia	56	9
Illinois	55	22
Kentucky	50	16
North Carolina	50	12
Missouri	50	8
Pennsylvania	44	9
Arkansas	44	9
New Jersey	43	7
Arizona	38	8
Georgia	33	18
Louisiana	17	12

NOTE: Data were collected by the authors. Only states participating in five or more cases are listed.

cases, while the state of Oregon won 90 percent. In short, because of variation among states, differing views have emerged over their litigation abilities.

A second implication of the variation existing among states is that some factor(s) must exist to explain it. That is, *ceteris paribus*, states (at least in criminal cases) should have performed equally as well before the Burger Court because, whether they asked the Court to reverse or affirm the decision of the court below, they always urged it to decide against the claims of the convicted defendant and, thus, for what many would call the "law and order" position. Hence, states as primary parties always are on the same side of disputes and, as such, should evoke similar responses from the Court.[4] But, as we see in Table 1, they do not.

[4]This is not necessarily the case when states participate as amicus curiae. Consider the now-famous example of *Gideon v. Wainwright*, 372 U.S. 335 (1963), when the attorney general of Minnesota, Walter Mondale, led 21 other states to file an amicus curiae brief, supporting Gideon's Sixth Amendment claim to the right of counsel.

A final reason for examining the efforts of states is that they participate, as main parties, in the majority of criminal cases. During the Burger Court years, states were involved in 356 (66 percent) of the 541 criminal cases, the solicitor general in 185.

In sum, due to the controversy and concern over their litigation, the variation among their success rates, and their substantial contribution to the Court's plenary docket, state legal efforts are inherently interesting and ripe for systematic examination.

Previous Research: Factors and Operationalizations

Independent Variables. Analysts working on the success of governments in Court tell us that two sets of factors may be relevant. The first, state characteristics—traits over which they have no control—may affect the justices' perceptions of them and thus their ability to win in Court. One such trait is the geographic region into which the state fits; for example, in a study examining U.S. Supreme Court behavior toward the states from 1889 to 1959, Horn (1962) found that southern states fared poorly compared with those located in the Northeast, in particular.

Almost twenty-five years later S. Sidney Ulmer set out to update Horn's analysis. After examining cases decided by the Supreme Court between 1903 and 1980 in which state laws were challenged as unconstitutional, Ulmer also found that the South and Southwest fared far worse than most of their regional counterparts. Although he could not systematically explain the Court's behavior, Ulmer argued that it probably was the result of "historical, political, economic, legal, or other sectional disparities of a type not addressed directly by the Court in making its decisions." Nonetheless, he concluded that "some sections of the country appear consistently more prone to Constitutional Turpitude than others" (Ulmer, 1986: 15–16).

Hence, based on Horn's and Ulmer's findings, any systematic investigation of state success must consider region as a primary determinant. To do so, we operationalize it in the form of a South/non-South dichotomy.[5]

Another trait scholars often use to explain variation among states is their general policy outlooks, that is, the ways in which they approach social and political phenomena, in and beyond the judicial realm. Such "outlooks," innovative or otherwise, may have two effects on the litigation efforts of states. First, as several scholars of the judicial process have noted, the manner in which states deal with other policies certainly will be reflected in their court systems (Caldeira, 1983, 1985; Canon and Baum,

[5]We used the ICPSR regional coding scheme to dichotomize region. Those listed as southern or border states and meeting the criteria for inclusion in this analysis were: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, Tennessee, Texas, and Virginia.

1981). What this implies is that some court systems, because of their states' general policies, will have better "reputations" than others on a wide variety of dimensions. And, since state attorneys initiate criminal proceedings in their respective states, the Justices will favor those with better reputations. More succinctly, states with generally "progressive" policies also may have similarly oriented court systems, the combination of which serves to strengthen their litigation efforts. Viewed in this way, states' judicial processes represent microcosms of their social and political culture—microcosms that Supreme Court Justices may perceive as negative or positive in the same way that other litigant traits, such as sex (Gryski et al., 1986) and sociopolitical status (Snyder, 1956; Ulmer, 1978, 1981), may affect judicial perceptions.[6]

Second, as the works of Kamisar (1983) and Ulmer (1986) suggested, it is reasonable to expect that even the more law-and-order-minded Burger Court gave the benefit of the doubt to states with generally progressive policy reputations (i.e., justices may assume that such states have a general commitment to fair treatment of the criminally accused and will question with greater scrutiny those states which have not established reputations for being committed to fair and humane treatment).

To tap this general notion of political-social outlooks, we use the general policy attitude scores of states as developed by Klingman and Lammers (1984). Like us, they were interested in a broad measure of "policy outputs" by which to compare states longitudinally. To create such general policy scores for each state, they "combined" various existing scales, including levels of state "innovativeness," the number of anti-discrimination and consumer provisions, and monies allotted to social welfare programs. These scores, in turn, correlate highly with myriad factors such as state political culture indexes, wealth, diversity, and population. Hence, for our purposes these general policy scores provide a most appropriate measure of the litigation literature's concept of state traits: they tell us a great deal about the overall policy outputs of states (regulatory and fiscal) and they were constructed with longitudinal analyses in mind (see Klingman and Lammers, 1984).

In terms of the actual state rankings and scores, states with high general policy scores are more innovative and forward looking in their approaches to social conditions, while states with low scores can be viewed as generally less responsive to social needs. New York's score of 1.86 makes it the highest ranking state, while Mississippi's −2.061 is the lowest.

[6]For years scholars have noted that certain litigant "traits" affect judicial behavior. Since publication of the pioneering works of Snyder (1956) and Ulmer (1978, 1981), we now know that one such "trait" is litigant status ("sociopolitical power"). Justices of the Burger Court, for example, tended to favor upperdogs in granting applications for "plenary review" (Ulmer, 1981:295). Another study indicated that state supreme courts tend to favor female litigants over their male counterparts in cases of sex discrimination (Gryski et al., 1986).

Thus, based on the state litigation literature, we expect to find a positive relationship between policy scores and success in Court.[7]

A second factor is structural in nature. Some states, following the lead of the solicitor general, have established specialized offices to handle Supreme Court litigation. In Oregon, for instance, the appellate division of its attorney general's office has the major responsibility for preparing briefs and arguing all criminal cases in the Supreme Court. In contrast, in Georgia, "the attorney who handled the case in the lower courts" generally litigates before the Supreme Court, with the attorney general reserving "the right to argue extraordinarily important cases," a right "rarely" invoked.[8]

On this concept of governmental litigation apparatus, the literature is of one voice. Scholars unanimously agree that those possessing a special office to handle Supreme Court litigation will fare far better than their counterparts (see, for example, Morris, 1987). Their rationale flows directly from the literature on the Office of the Solicitor General, which attributes its success in large measure to its centralized decision-making process (Baker and Asperger, 1982; Morris, 1985). That is, decisions concerning participation in cases (e.g., whether to appeal, participate as an amicus curiae) are made in one locale, dissipating the possibility of sending mixed signals to the Court. Moreover, those states with specialized offices (and the Office of the Solicitor General) develop greater familiarity with the procedures of the Court and a level of expertise that the "one-shotter" local attorneys cannot possibly possess.

To capture this concept of governmental litigation apparatus, we determined whether or not the state had established a special office to handle appeals to the Supreme Court.[9] We expect that states possessing such offices will fare better in litigation than their counterparts.

We have thus far suggested that two sets of factors—state traits and governmental litigation apparatus—help to explain variation among success rates. Yet, scholars have isolated at least one other that may be a significant determinant of litigation success, the "appealing party." Because the Court hears cases most often to reverse lower court holdings, appellants enjoy an advantage over their appellee counterparts (see Provine, 1980, and Wasby, 1984). Admittedly, this factor does not work to

[7]For the states included in this analysis, the general policy scores range from 8.137 to 11.862, with a mean of 10.059. We added 10 points to each score to remove the negative signs.

[8]These and other quotes come from a survey sent to every state attorney general. A copy of this survey is available from the authors.

[9]The question on the survey used to determine whether or not the state has a specialized litigating office was "Does your state have a specialized office or division that routinely handles criminal cases at the level of the U.S. Supreme Court? Yes or No." Fourteen of the 22 states included for analysis possess such offices.

the advantage of a specific state; that is, the advantage may be illusory because of the Court's propensity to reverse. Nonetheless, given the clear advantage appellants enjoy in litigation, this is a factor for which any framework of success, including ours, must control.

We operationalized appealing party simply by coding whether the state or the alleged "criminal" appealed to the Supreme Court. If the state appealed, we expect of course to find its chances of victory far greater.

The Dependent Variable. The literature indicates that two sets of conceptual variables—state traits and governmental litigation apparatus—and one controlling variable—appealing party—explain variation among state success rates. We operationalized success as a simple dichotomy—either the state won or lost a given case. Thus, cases themselves serve as our units of analysis.

The data consist of all criminal cases decided during the Burger Court era (the 1969–85 terms) in which states participated.[10] We defined criminal cases as those involving rights contained under the Fourth, Fifth, Sixth, and Eighth amendments. Cases listed in the *U.S. Reports* decided by full opinions or by per curiam opinions with substantial legal reasoning were included.[11]

A Model of State Litigation Success. Based on our interpretation of the literature, we have developed the following model to explain variation among states' success rates:

$$\text{State Success} = a + b_1(\text{Region}) + b_2(\text{General Policy Score}) + b_3(\text{Specialized Office}) + b_4(\text{Appealing Party}) + \text{Error}$$

where state success = 0 if state lost, 1 if state won; region = 0 if southern state, 1 if nonsouthern state; general policy score = general policy attitude score of state; specialized office = 0 if no office, 1 if an office exists; and appealing party = 0 if the state appealed, 1 if the "criminal" appealed. Hence, we expect to find:

$$b_4 < 0 < b_1, b_2, b_3$$

[10]All data reported in this article were collected by the authors. We have made the data base available through the American Political Science Association's section on Law, Courts, and Judicial Behavior. For more information, contact Wayne McIntosh, Department of Government and Politics, University of Maryland, College Park, Maryland 20742.

[11]We realize that we may be distorting success by only dealing with accepted cases. A state may have a high success rate once a case is accepted, but overall may have a low rate because of a high number of losses at the acceptance stage. Given that the focus of this paper is on state success in cases decided on the merits, we do not believe that this presents a problem. Future studies examining this relationship in another context may wish to focus on this other aspect of Court decision making.

TABLE 2

Probit Estimates for State Success

Variable	MLE	*SE*	MLE/*SE*
Appealing party	−1.13**	0.16	−7.06
Region	−0.31	0.27	−1.15
Special office	0.39*	0.17	2.33
General policy score	−0.27*	0.13	2.17

Constant = −1.87

$-2 \times \text{LLR}\ (\chi^2_4) = 71.9$**

Mean of dependent variable = .59
Percent categorized correctly = 73%

n = 304

*Significant at .05.
**Significant at .01.

Analysis

Since our dependent variable is dichotomous, we used probit, a maximum likelihood estimate (MLE) technique, to estimate our parameters for each variable. The results are presented in Table 2.

At first glance, the model we propose performs quite well. The −2 × LLR (LLR = log likelihood ratio) measure indicates that the model is significant at less than .01. Moreover, consider the mean of the dependent variable, 59.5 percent, that is, states win 59.5 percent of their cases. Knowing nothing beyond this, we could predict the outcome in such cases 59.5 percent of the time. Our model, which categorized correctly 73 percent of the cases, thus, substantially increases our prediction accuracy. Put in different terms, we have reduced our prediction error by 22 percent.

As also indicated in Table 2, with but one exception, our parameter estimates are statistically significant in the hypothesized direction. As we fully expected, the appealing party variable clearly affects success. Scholars repeatedly have found that the appealing party stands a higher chance of success once the case is accepted for a hearing on the merits. Here we merely reinforce that conclusion: the mean probability of predicted success, computed by cases, jumps from .62 to .84 when states appeal their cases.

Turning to our explanatory variables, the specialized office is also a significant determinant of state success, conforming again to our expectations. As suggested earlier, many scholars have indicated that one office to handle Supreme Court cases on behalf of the U.S. government is

critical because it avoids sending mixed signals to the Court. Apparently, the same holds true for the states—those that possess a coordinating litigation office (as opposed to allowing local prosecutors to make litigation decisions) increase their chances for success. The mean probability of success for states possessing specialized offices is .69, a score that decreases to .50 for those without such apparatus.

Finally, the finding that the general policy score also adds to state success meets our expectations. States ranking high on this measure are generally dedicated to pursuing "progressive" public policies (see Klingman and Lammers, 1984)—a pursuit which the Court perceives as positive and hence "rewards" much in the same way it treats other litigants with "special traits." And those differences are substantial: states possessing general policy scores between 9 and 10 face a .44 probability of success, a number increasing to .84 for those with scores higher than 11.

Although these results seem to support our expectations, the picture is not wholly perfect. In fact, a serious deficiency exists in our current model, the finding that region produces a negative estimate. That is, when we control for the other variables, southern states appear to have an advantage in litigation. And, although the estimate fails to attain statistical significance, the fact that the MLE/*SE* exceeds 1 (and thus adds to the overall explanatory power of the model) troubles us.

How can we possibly explain such surprising results? One plausible explanation, we thought, was that the general policy score was masking the effect of region. If we return to our data, this finding makes some conceptual sense: the policy score is comprised in large measure of region; that is, the correlation between that score and region is .78. Moreover, a bias exists in favor of nonsouthern states: the mean, computed by case, for southern states is 9.2 versus 11.5 for nonsouthern states. What this strongly implies is that we need to revise our initial model to control for the interaction between region and policy score. More specifically, we wanted to examine the possibility that our original variables have differential effects across regions.

To accomplish this, we created separate variables for the southern and nonsouthern states from our original variables. Consider appealing party. Initially, we entered into our model the appealing party for all states. To assess whether such rates were equally influential on the success of southern versus the nonsouthern states, we created two new variables: appealing party for the South and for the non-South. We followed the same approach for each of our remaining variables, general policy score and special office. Hence, instead of entering into the model our three original variables (excluding region), we included six.

Table 3 depicts the estimates and summary statistics for this respecified

TABLE 3

Probit Estimates for Revised Model of State Success

Variable	MLE	*SE*	MLE/*SE*
Appealing party—non-South	−1.23**	0.22	−5.54
Appealing party—South	−1.00**	0.24	−4.32
Special office—non-South	0.18	0.25	0.75
Special office—South	0.56**	0.22	2.50
General policy score—non-South	0.26*	0.12	2.17
General policy score—South	0.25*	0.15	1.71

Constant = −1.90
−2 × LLR (χ^2) = 73.6**
Mean of dependent variable = .59
Percent categorized correctly = 73
n = 304

*Significant at .05.
**Significant at .01.

model. As is clearly indicated in Table 3, the regions are substantially similar on most dimensions: the southern versus nonsouthern estimate for appealing party, and the general policy score are not significantly different.[12] The special office variable, however, is quite revealing—apparently, the presence of such offices is a significant factor for southern success, but not for nonsouthern states! Special office—South yields a significant estimate, while the nonsouthern counterpart fails to perform likewise. In sum, our control measure (appealing party) and our state trait category (operationally defined by general policy scores) yield significant estimates for both regions, but our governmental litigation variable produces markedly different results for the two regions.

What does this finding imply for the litigation efforts of southern and nonsouthern states? Table 4 addresses this question by depicting the probabilities for success under "worst" and "best" scenarios for the different regions.[13] Let us turn first to the "worst" scenarios: these include cases in which the participating state did not possess a specialized

[12] To determine whether the estimates obtained for each pair of variables (e.g., appealing party—South versus appealing party—non-South) differed significantly, we used the following formula: $(\hat{\beta}_j - \hat{\beta}_k)/(S_{\hat{\beta}_j - \hat{\beta}_k})$, where: $S_{\hat{\beta}_j - \hat{\beta}_k} = [\mathrm{Var}(\hat{\beta}_j) + \mathrm{Var}(\hat{\beta}_k) - 2\mathrm{Cov}(\hat{\beta}_j, \hat{\beta}_k)]^{\frac{1}{2}}$ (see Kmenta, 1971).

Although this is usually used to compare OLS slope estimates, no reason exists to suspect that it would be inapplicable to MLEs as well.

[13] To compute these probabilities, we solved the various equations, using the MLEs depicted in Table 3. We then transformed those solutions to probabilities.

TABLE 4

Probability of State Success under Different Conditions

	Mean Probability of Success	Standard Deviation	Number of Cases
Southern states			
"Best" scenario[a]	.852	.003	17
"Worst" scenario[b]	.266	.000	17
Overall	.527	.208	140
Nonsouthern states			
"Best" scenario[a]	.895	.011	58
"Worst" scenario[b]	.307	.000	5
Overall	.692	.224	164

[a]Cases in which the state's general policy score was above the mean, the state appealed, and the state possessed a specialized office.

[b]Cases in which the state's general policy score was below the mean, the state did not appeal, and the state did not possess a specialized office.

office, the "criminal" appealed, and the state's general policy score was below the mean (less than 9.3 for the South and 11 for the non-South). Not surprisingly, states within both regions perform poorly under these circumstances: The mean probability of a southern state achieving victory is just .27 compared to an overall 53 percent probability of success. Nonsouthern states fared just as poorly, achieving a mean probability score of .31, a 38 percent point drop from their average of .69.

Now consider cases brought under the best circumstances: appeal by states with above average general policy scores and with specialized litigating offices. As we would expect, states of both regions generally win these cases. What is even more interesting, however, is that the mean probability success scores for the South and its counterpart region are not altogether different (.85 versus .90), particularly considering the fact that the bases from which they start (overall mean probabilities) are highly disparate.

In sum, the Court favors nonsouthern litigants over their counterparts. States within the South, however, can substantially improve their efforts and, in fact, achieve near-parity with nonsouthern states by creating specialized litigating offices.

Discussion

Now that we have specified a reasonably good model, and explored its implications, what can we conclude about the litigation efforts of the various states? For openers, given the results illustrated in Table 3, we cannot

necessarily discuss the activities of the southern and nonsouthern states in the same breath. Apparently, a great proportion of the variation in nonsouthern state success before the Court is predetermined by such inflexible factors as general policy scores and appellate rates. That is, the need for nonsouthern states to develop specialized legal offices is far less "urgent" than for their southern counterparts: the Court seems to perceive positively states with innovative reputations in the same way that it apparently "rewards" other kinds of advantaged parties. Consider the example of New York, a nonsouthern state which won 71 percent of its cases. According to the deputy solicitor general of the state:

> The basic responsibility for the handling of criminal cases rests with the elected District Attorneys in each of the counties. The handling of criminal issues, unless there is a challenge to the constitutionality of a State statute, rests with the District Attorneys in the United States Supreme Court, as well as the lower courts.

TABLE 5

Probabilities of Success for Each State

State	General Policy Score	Specialized Office	Probability of Success When State Appeals	Probability of Success When State Does Not Appeal
Alabama	8.7	Yes	.80	.43
Arizona	8.6	Yes	.70	.24
Arkansas	8.1	Yes	.75	.38
California	11.5	Yes	.90	.52
Connecticut	11.5	Yes	.90	.52
Florida	9.5	Yes	.85	.51
Georgia	9.1	No	.65	.27
Illinois	10.5	Yes	.84	.41
Kentucky	9.7	No	.70	.32
Louisiana	9.3	No	.66	.28
Massachusetts	11.8	Yes	.91	.55
Michigan	11.1	Yes	.88	.47
Missouri	9.1	Yes	.74	.28
New York	11.9	No	.88	.49
New Jersey	11.5	No	.86	.44
North Carolina	9.1	No	.65	.27
Ohio	10.1	No	.77	.31
Oregon	11.4	Yes	.89	.51
Pennsylvania	11.1	Yes	.90	.41
Tennessee	8.8	Yes	.81	.44
Texas	9.6	Yes	.86	.52
Virginia	9.3	No	.66	.28

Hence, New York does not have a specialized office to handle Court cases. What it does possess is the highest general policy score of all the states included in this study! Conversely, the southern states are starting from a lower baseline and thus can improve their efforts via the development of legal expertise. That is, simply because a state is located in the South and possesses a "noninnovative" policy structure does not automatically imply litigation failure. Consider the examples of Louisiana and Florida, two southern states with similar general policy scores yet with success rates of .17 and .61 respectively. Why the difference? Florida possesses a criminal appeals division, which handles all Supreme Court cases, while Louisiana has an eclectic system in which some cases are brought to the Court by the state's attorney general and others by local prosecutors.

Table 5 summarizes these and other observations concerning the individual states. Here, we depict general policy scores, specialized office status, and the probabilities of success for each state when it did and did not appeal—probabilities generated from the estimates shown in Table 3. Clearly, as the actual success rates (see Table 1) and the probabilities indicate, general policy scores and specialized offices affect Court decisions. But as Table 5 makes abundantly clear, the appealing party variable certainly changes the success probabilities of the individual states. In some instances, the differences are quite dramatic; consider Arizona, which has a 70 percent chance of winning when it appeals, but only 24 percent when it is the appellee. Overall, if we compute means on a state-by-state basis, states stand an 80 percent chance of winning cases they appeal, but only 40 percent in cases in which the "criminal" appeals.

Conclusion

This study sought to explain systematically variation in state success rates, an important undertaking in light of the growing body of literature on this subject and the debates surrounding it. To accomplish this task, we constructed a model derived from qualitative analyses on this subject. Conceptually, it consisted of two sets of explanatory variables—state traits and governmental litigation apparatus—and one control variable—appealing party. Upon further analysis, however, we discovered the need to distinguish between the efforts of southern and nonsouthern states. This finding alone is significant as it certainly helps to explain why state litigation is controversial—their efforts cannot be treated as one.

Beyond answering our original research question, these findings also make a preliminary statement about the richness of the judicial process. While the sociopsychological models first developed in the late 1950s successfully looked for explanations of judicial output in individual justices' characteristics, we now know that the Court also may possess

biases toward or make assumptions about litigants, as it does toward the states. That is, although our results indicate differences between the two regions, what our findings imply more generally is that we can develop frameworks by which to examine the success of other kinds of litigants. Individual measures need to be created, depending upon the party itself, yet any model of litigant success can be developed around the guiding concepts of litigant "traits," structural judicial factors, and appealing party (as a control). The utility of such an approach can be demonstrated by considering any number of areas of the law and/or parties. Consider criminal litigation from the accused's perspective. Litigant traits, in such an example, could encompass measures including the sex of the offender, the type of crime committed, and so forth. And structural judicial factors could tap the expertise of attorneys representing criminal defendants. Examined in this vein, our approach and those of the behavioralists are complementary, providing "external" and "internal" ways of viewing the vastness of judicial decision making. Thus, we encourage scholars to use different operationalizations of these concepts, while building on those we found to be particularly useful. SSQ

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