

State Public Opinion, the Death Penalty, and the Practice of Electing Judges

Paul Brace Rice University

Brent D. Boyea The University of Texas at Arlington

Do state supreme courts act impartially or are they swayed by public opinion? Do judicial elections influence judge behavior? To date these questions have received little direct attention due to the absence of comparable public opinion data in states and obstacles to collecting data necessary for comprehensive analysis of state supreme court outcomes. Advances in measurement, data archiving, and methodology now allow for consideration of the link between public opinion and judicial outcomes in the American states. The analysis presented considers public opinion's influence on the composition of courts (indirect effects) and its influence on judge votes in capital punishment cases (direct effects). In elective state supreme courts, public support for capital punishment influences the ideological composition of those courts and judge willingness to uphold death sentences. Notably, public support for capital punishment has no measurable effect on nonelective state supreme courts. On the highly salient issue of the death penalty, mass opinion and the institution of electing judges systematically influence court composition and judge behavior.

The practice of electing judges juxtaposes two fundamental but contrasting values: democracy¹ and judicial independence.² Striking a balance between majority rule and individual rights has been a recurrent problem in the United States and other democracies (Gibson 1990), and it is commonly believed that this fragile symmetry is imperiled where judges are elected. Both historical (Bryce 1888; Pound 1906; de Tocqueville 1831) to contemporary observers (American Bar Association Commission on the 21st Century Judiciary 2003; Rottman and Schotland 2001) bemoan the practice of subjecting judges to popular election. Notably, in her concurrence in *Republican Party of Minnesota, et al. v. White* (2002), Justice O'Connor reasoned if a "state has a problem with

judicial impartiality, it is largely one the State brought upon itself by continuing the practice of popularly electing judges" (536 U.S. at 792; emphasis added).

Justice O'Connor's observation summarizes the widely held belief that has taken on the status of a truism: judicial elections influence judicial decision making. By tying judicial office to success in elections, many observers fear judges bend to public opinion rather than follow the rule of law. While the belief that public opinion influences judges is pervasive among many observers of state courts, the connection between public opinion and political outcomes is not a forgone conclusion in studies of more traditional representative institutions and policy (Burstein 2003). The complexity of representative

Paul Brace is the Clarence L. Carter professor of political science, Rice University, P.O. Box 1892, Houston, TX 77251-1892 (pbrace@rice.edu). Brent D. Boyea is assistant professor of political science, The University of Texas at Arlington, Box 19539, Arlington, TX 76019-0539 (boyea@uta.edu).

An earlier version of this article was presented at the 2004 annual meeting of the American Political Science Association and received the SPPQ Award from the State Politics and Policy Section of the American Political Science Association for the best paper on state politics presented at any conference in 2004. An earlier version of this article was also presented at colloquia at the University of Pittsburgh and Pennsylvania State University. The authors appreciate the constructive input received at both events. We thank Victoria Farrar-Myers, David Lowery, William Reed, and the five anonymous reviewers for their comments and assistance with this article. This research was supported in part by the National Science Foundation. However, we alone accept responsibility for this article, including any errors.

¹Democracy is a political system that requires unimpaired opportunities for all full citizens "(1) to formulate their preferences, (2) to signify their preferences to their fellow citizens and the government by individual and collective action; and (3) to have their preferences weighed equally in the conduct of government, that is, weighed with no discrimination because of the content or source of the preference" Dahl (1971, 1-2).

²Predating the U.S. Constitution, Montesquieu (1750) observed that keeping judges independent of outside influence allows them to "follow the letter of the law" in the course of "trying the causes of individuals."

American Journal of Political Science, Vol. 52, No. 2, April 2008, Pp. 360-372

©2008, Midwest Political Science Association

ISSN 0092-5853

political processes (e.g., Arnold 1990; Jones 1994) and inherent limitations in the cognitive capabilities of citizens (e.g., Zaller 1992) commonly portray mass-elite linkages as far short of concrete. Why would we expect judges to heed public opinion when legislators do so on far less than a universal basis? To date there have been no direct tests of the effects of public opinion on judge decision making in state courts. This is a particularly fruitful place to examine mass-elite linkages because these courts differ in a very critical regard: some are elected and some are appointed. In the study that follows, we capitalize on advances in measurement and newly available data in state politics research to scrutinize the linkage between public opinion and judge decision making in elective and non-elective state supreme courts.

Suggestive Patterns

Recent research suggests the concerns about the impact of elections and public opinion on judges may be justified. Hall (2001) finds that elective state supreme court judgeships exhibit high levels of defeat, exceeding typical turnover in Congress and many state legislatures, where the drive for reelection is commonly considered pervasive. Moreover, competition in these elections is governed by many of the same factors influencing legislative elections, with quality challengers taking into account the electoral vulnerability of incumbents, and with voters responding to the quality of the challengers (Hall and Bonneau 2006). Do elective judges have their eye on the ballot box? In their enlightening study of criminal trial judges in Pennsylvania, Huber and Gordon present convincing evidence that sentencing becomes more punitive as elections near (2004). This occurred even though these were low-information, nonpartisan retention elections.

Many judicial elections have become more visible during the last two decades. Observers of these contests have commented on a new style of judicial campaign, with heated races focused on hot-button issues (Baum 2003; Hall 1987), and heightened levels of contestation in the late 1990s (Hall and Bonneau 2006). Traditionally these races were "low-information affairs" with little voter attention and limited participation (Baum 2003). Increasingly, contestants gained attention in these otherwise staid contests by capitalizing on the public's fear of crime generally, and support for capital punishment specifically. As noted by Baum, "[i]n this climate of opinion, creating the impression that a judge is soft on crime can have great electoral impact. Convincing voters that a judge is unwilling to impose or uphold death sentences is uniquely effective because capital punishment is especially salient

and easy to understand" (2003, 35). In state after state, supreme court judges who voted to overturn death sentences faced opponents who labeled them as soft on crime, even if these votes were based on findings of egregious error (Bright and Keenan 1995). It is hard to imagine other judges are unaware of these races.³

It should come as no surprise that capital punishment is particularly salient in contests for state supreme court seats. Most fundamentally, the death penalty is a morality policy: a highly salient issue on which electorally inclined policy makers have an incentive to act, and citizens have the ability to form and voice their opinions (Mooney and Lee 2000, 230). There is a strong connection between public opinion about capital punishment and capital punishment policy and practices in the states (Norrandner 2000). As a procedural matter, state supreme courts review all death sentences given in their state if appealed by the criminal defendant. In many states, death penalty appeals constitute one-fourth or more of state supreme court dockets (Brace and Hall 2005). These cases force state supreme court justices to review what are often very heinous crimes that have had substantial media coverage. The public, moreover, has shown substantial support for capital punishment. Various annual polls document a dramatic increase in support for the punishment into the 1990s, with support rising from 70 to 75% in the 1970s (Ellsworth and Gross 1994) to a peak of almost 80% in 1994 (Harry 2000). When it comes to capital punishment, state supreme court judges often confront very visible cases involving an issue very salient to the public, providing an ideal place to examine the linkage between public opinion and judicial decision making.

Conditions for Mass Elite Linkages

Concern about judicial independence is essentially the converse of traditional interest in representative theory with elite responsiveness to public opinion. An important research tradition examines linkages between political elites and masses. In its simplest form, these theories employ a demand-input model that commonly posits constituency as an exogenous independent variable and representatives' attitudes and actions as dependent variables (Hurley and Hill 2003). These studies illuminated notable relationships between masses and policymaking elites (see, e.g., Miller and Stokes 1963). However, later research presents a more complex picture, noting the

³The effects of political pressures on death penalty decisions are analyzed by Hall (see, e.g., 1987). The argument that these pressures have a strong influence on outcomes is developed in Bright and Keenan (1995).

importance of variations in issue characteristics and connections to party cleavages (Hurley and Hill 2003). When issues are complex, or when they are tied to party cleavages, public opinion may be influenced by political events, elites, or policy itself. When issues are simple with opinions on them widely held, cutting across party cleavages, the standard demand-input model of one-way responsiveness is appropriate (Hurley and Hill 2003). The death penalty meets this standard as revealed below.

The Death Penalty: Anatomy of a Salient Cross-Cutting Issue

While support for capital punishment stabilized or marginally decreased in the 1990s (Fan, Keltner, and Wyatt 2002), public approval of the death penalty remained very high in many American states, registering only moderate variation between political party affiliations (Soss, Langbein, and Metelko 2003). Table 1 illustrates support for the death penalty by party affiliation in the 1996 American National Election Study, the period of interest to this analysis. While Republicans were more supportive of capital punishment than Democrats, it is notable that almost three times as many Democrats strongly supported the punishment as strongly opposed it and that a majority of Democrats, Republicans, and Independents strongly favored the punishment. This type of cross-cutting support was reflected in the passage of the Violent Crime and Law Enforcement Act of 1994 (P.L.103-322) by a Democratically controlled Congress and signed into law by a Democratic president. Among other things, the law expanded the number of federal offenses subject to the death penalty from two to 60. Clearly, there is significant evidence from the 1990s of strong elite and mass support for capital punishment that cut across normal partisan divisions. This support, however, varied substantially across the United States (Baumer, Messner, and Rosenfeld 2003; Brace et al. 2002; Norrander 2000).

State Supreme Court Decisions on the Death Penalty: Testing for Linkage

Claims that political outcomes are linked to public preferences rest on the assumption that political elites derive benefit from pursuing outcomes that accord (or appear to accord) with the wishes of citizens (e.g., Geer 1996). Consequently, outcomes correspond with public sentiment because elites fear losing office, or because the elite

TABLE 1 General Support for the Death Penalty by Partisan Affiliation, 1996

	Democrat	Independent	Republican
Favor	70%	81%	89%
(Responses)	(393)	(313)	(354)
Oppose	30%	19%	11%
(Responses)	(169)	(74)	(44)
Total	100%	100%	100%
(Responses)	(562)	(387)	(398)

Source: Soss, Langbein, and Metelko 2003; American National Election Studies 1996.

shares the public's opinion about the outcome.⁴ Following the classic argument of Miller and Stokes (1963), the public's support for the death penalty may thus operate *directly* and lead seated judges to alter their voting behavior to align with public opinion, or *indirectly* by helping to recruit judges who share the public's sentiments. Given the gravity of a death sentence, it is easy to imagine a state supreme court justice who was morally opposed to the death sentence hastening his or her retirement from the bench in a political atmosphere where capital punishment had taken center stage. The most reasonable place to look for linkage is where the public holds strong opinions and where elective selection systems can intersect public preferences with judge reelection. While the states use five different formal systems for selecting judges (American Judicature Society), the most notable distinction among these is that some require judges to obtain the support of voters through election while others do not.⁵

Direct Linkage

Most fundamentally, we examine how court environment, judge preferences, and case characteristics relate to judge

⁴Significant research has examined the responsiveness of the U.S. Supreme Court to public opinion by evaluating shifts in judge voting (McGuire and Stimson 2004; Mishler and Sheehan 1993; but see Norpoth and Segal 1994).

⁵Baum (2008) notes that the most likely and important effect of judicial selection systems is the impact of elective systems on judges' responses to public opinion. He notes, "[j]udges who require the approval of voters to keep their positions may avoid taking positions that challengers could use against them in a campaign," adding that the most important decisions are those that can be depicted as unduly favorable to criminal defendants, like votes to overturn a death sentence (2008, 119). Following this line of reasoning, in our analyses we distinguish state judicial selection systems into those that do and do not require their state supreme court judges to obtain the approval of voters to keep their positions.

voting in capital cases. We hypothesize that when there (1) is strong public opinion and (2) are judges facing election, there will be a connection between public opinion and judge voting. We further hypothesize this connection to be conditioned by whether candidates are restricted from campaigning on the issue by state laws governing campaign conduct and the presence or absence of pressure groups that advocate use of capital punishment. We also control for the effects of alternative explanatory influences on judge voting: judge ideology, quality of counsel, case attributes, and legal appeals raised in a case.

Court Environment. *State Public Death Penalty Opinion.* Extending the methodology developed by Erikson, Wright, and McIver (1993), Brace et al. (2002) disaggregated observations compiled in the annual General Social Survey to the state level on a variety of questions. Of special interest here are the results concerning state-level support for the death penalty, a measure demonstrated to be highly reliable and stable over time.⁶ This state-level, survey-based measure allows us to consider how variations in public death penalty support across the states may influence judge decision making in capital cases that come before them.

Judicial Elections. We expect the effects of public opinion to be contingent on judicial election. On a salient issue like the death penalty, elected judges need to worry about attracting strong challengers (Hall and Bonneau 2006). Appointed judges do not face this prospect and consequently we do not expect their death penalty decisions to be linked to public opinion on this issue.

Campaign Restrictions. Before they were partially invalidated by the U.S. Supreme Court in 2002, many states placed a variety of restrictions on judicial candidates. These states applied what were commonly known as the "commit clause" restricting judicial candidates from making "statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court."⁷ Our hypothesis here is straightforward and follows the logic of these restrictions. We expect that where such restrictions exist, judges are better insulated from potential attacks on their death penalty votes and arguably have less need to be responsive to public opinion. Alternatively, in states without these

restrictions, incumbent judges and their opponents may publicly articulate their views on the death penalty and make capital punishment an explicit campaign issue. Under these circumstances judge votes in capital cases can come back to haunt them at election time, and we would expect this to reduce their willingness to vote to reverse a capital sentence.

Pro-Capital Punishment Interest Organizations. Interest organizations play a substantial role in many facets of state policymaking generally (see, e.g., Gray and Lowery 1996; Gray et al. 2005) and in the process of judicial selection specifically (see, e.g., Champagne 2001). The impact of pressure groups on judicial decision making in capital punishment cases, however, is less understood. We hypothesize that the presence of pro-capital punishment groups reduces the likelihood of judges voting to reverse capital sentences because these groups can publicize judge voting records in death penalty cases.

Judge Ideology. Of course, to systematically evaluate the effect of public opinion, we must weigh its influence against alternative explanations of judicial decision making. Segal and Spaeth's attitudinal model, while not without controversy, has had massive influence on judicial scholarship (Baum 1997).⁸ The model holds that justices make legal decisions based on their own ideological attitudes and values (Segal and Spaeth 1993, 73). The effect of judge ideology is a central concern in our analysis for two reasons. First, the effects of judge ideology may be overwhelmed by public opinion regarding the death penalty in states that elect their judges, indicating that public sentiment was more influential than the judge's ideological preferences in death penalty cases and that public opinion was having a direct effect on judicial decision making. Second, judge preferences might remain a significant influence in death penalty cases, but these preferences might be tied strongly to public preferences. In elective states, conservative electorates may elect conservative judges who in turn make decisions this conservative public supports. This would be evidence public opinion was having an indirect effect on judicial decision making.

Studies of American appellate courts below the level of the U.S. Supreme Court find judge attitudes matter, but they are much more constrained by law as well as institutional and political contexts. Lower appellate judges face conflicting demands derived from legal and political sources (Richardson and Vines 1970) and studies across a wide variety of legal issues found support for the joint

⁶The Spearman-Brown prophecy formula coefficient reports a reliability and stability score of .83.

⁷1990 American Bar Association Model Code of Judicial Conduct Canon 5(A)(3)(d)(ii). Recent research by Gibson (2008) raises doubts that policy pronouncements by judicial candidates decrease perceptions of court legitimacy or impartiality among citizens. We acknowledge the vital importance of this finding but our interest is in how campaign restrictions may influence judge behavior.

⁸Baum notes, "In scholarship on the Supreme Court . . . the view that policy considerations are dominant over legal considerations has been taken by the most prominent work" (1997, 22).

influence of law, attitudinal preferences, and political context (see, e.g., Carp and Stidham 1985; Songer, Segal, and Cameron 1994). Following this research tradition, we consider the combined influences of judge attitudinal preferences and law in the political context of capital punishment cases. We expect that judges are more likely to find reversible error and overturn a death penalty sentence where their preferences are ideologically more liberal.

Case Characteristics. *Quality of Counsel.* Competency of counsel is a major issue in many capital cases (Bright 1994). Public defenders often have fewer resources to defend their clients (see, e.g., Hoffman, Rubin, and Shepherd 2005).⁹ The effects of this disparity on the outcomes of capital cases has been the subject of intense debate in the U.S. Supreme Court, where the court has typically been divided along ideological lines with conservatives more inclined to dismiss the issue than their more liberal counterparts (see, e.g., *Williams v. Taylor* 529 U.S. 362, 2000). We hypothesize there may be more grounds for reversible error on appeal where defendants are represented by public defenders but that sensitivity to these issues is conditioned by judge ideology: judge liberalism will affect judge sensitivity to competency of counsel issues.

Legal Issues: Aggravating Factors and Appeal Complexity. Criminal issues could outweigh the influence of public opinion or judge ideology in capital cases before state supreme courts because state supreme court decisions are subject to subsequent review. Given the possibility of appeal, state supreme court justices likely cannot ignore case facts or major legal issues regardless of their ideological preferences or public opinion (Brace and Hall 1997; Traut and Emmert 1998).

Capital crimes all involve murder and are by definition the most serious of crimes. However, many death penalty cases involve more than one crime, with capital sentences given partly on the basis of these aggravating circumstances. Presumably a justice would be less inclined to vote to overturn cases where there were more aggravating criminal acts. We develop a composite measure of crime severity derived from the crimes identified in a capital conviction. Our expectation is capital sentences are less likely to be overturned when the murder was accompanied by additional aggravating criminal acts.

Appeals of capital convictions normally raise a variety of legal issues such as competency of trial-level counsel, improper prosecutorial behavior, inappropriate instructions to juries, and other procedural problems. Hypo-

thetically, cases that identify many legal issues might give judges more opportunity to vote to overturn a death sentence, so we might expect the number of legal issues in a case to be positively related to the likelihood of a vote to overturn a death sentence. However, capital appeals are more complex than this simple logic would imply. First, the convicted person must have exhausted his or her appeals "on the merits" of the trial. Thus when a person is convicted of a crime, he can appeal that conviction in the state court appellate process. If he has been unsuccessful in overturning the conviction through the state court process, he then can appeal that conviction on the merits to the U.S. Supreme Court. If those appeals are unsuccessful, the defendant can begin his attempt to obtain a writ of *habeas corpus* in the federal appellate system. In 1995 the U.S. Supreme Court in *Schlup v. Delo* (1995) ruled that under most circumstances, capital convicts could file only one petition for a writ of *habeas corpus*. After *Schlup*, an individual could no longer spend years developing new petitions on different issues (and thereby begin a series of journeys through the state and federal court systems); instead, he had to place every argument possible in one petition. As a consequence of this limitation, many appeals to state supreme courts came to take on omnibus characteristics, literally covering the legal landscape regarding issues in their respective trials and convictions.

While we cannot pass judgment on the merit of the many legal issues raised in these cases, it does seem the wider variety of issues raised may be more perfunctory than focused. Cases that focus on fewer issues should provide a more succinct and clear appeal. An appeal that focuses on central issues may be more persuasive, raising doubts about the adequacy of key elements of a conviction or sentence rather than assailing the legitimacy of a state's entire criminal justice system.¹⁰ Following this logic, we develop a composite measure of appeal complexity derived from coding all of the legal issues raised in capital appeals cases.

Indirect Linkage

Here we are interested in the connection between judge ideology and public sentiment about the death penalty. States may have publics that are strongly supportive of the death penalty who in turn succeed in placing judges with

⁹Criminal defendants were represented by public defenders in 38.2% of state supreme court capital appeals from 1995 to 1997 (Source: SSCDA).

¹⁰Caution is warranted in the interpretation of this variable due to the endogeneity of legal issues identified. State supreme courts may address every issue raised in unsuccessful appeals but only address issues that lead them to overturn a sentence in a successful appeal, ignoring other issues.

STATE I
conse
vote t
may c
are pl
C
the li
conn
expe
cour
betw
whe
pun
opin
are
alig
way
opi
jud
of c

D

TI
m
de
St
at
w
c
st
g
a
l
c
s
c

conservative ideology on their courts. These judges then vote their ideological preferences. The public's preferences may connect to judicial outcomes through the judges that are placed on their courts.

Consistent with our argument to this point, we expect the linkage of judge ideologies to public sentiment to be connected through elective court systems. Moreover, we expect the saliency of the death penalty to reinforce this connection. Consequently, we expect a significant linkage between public death penalty opinion and judge ideology where judges are elected, and where states have capital punishment laws. In sum, when the public has strong opinions, when a salient issue is in play, and when judges are elected, the ideology of courts will be more closely aligned with the preferences of citizens. Stated another way, without elections, or in the absence of strong public opinion, or if a salient issue is not in play, the ideologies of judges and the preferences of citizens will be independent of one another.

Data and Measurement: Capitalizing on Recent Advances

The questions asked in this analysis create substantial demands in both data and measurement. Until recently, undertaking a study of this kind was virtually impossible. State-level measures of public opinion were nonexistent and no measure of state supreme court judge ideology was available. As a consequence, studies of state supreme courts examined subsets of states using surrogate measures for public opinion, such as murder rate, and surrogate measures for judge preferences, such as political party affiliation (e.g., Brace and Hall 1997; Traut and Emmert 1998). These studies have been very enlightening, but to date no study has employed comprehensive data from all states or used demonstrably valid and reliable measures of public opinion or state judge ideology. This study capitalizes on progress in the state politics field generally and state supreme court studies specifically. We now have valid and reliable measures of key variables as well as comprehensive data on state supreme court decisions and the justices making those decisions.

Erikson, Wright, and McIver's (1993) influential work revolutionized the study of state-level public opinion. They showed us that state opinion data could be disaggregated from the pooled national CBS/NYT survey and that their measure of general ideology was strongly connected to politics and policy in the American states. Brace et al. (2002) extended this methodology to compile measures of state-level opinion on specific issues, including

support for capital punishment. We use their measure of public support for the death penalty to assess the impact of public attitudes on the decisions made by state judges.

We expect the threat of elections to influence judge votes in death penalty decisions. Thirty-eight states use some form of elective method to retain their state supreme court judges. We hypothesize that the effects of public opinion will be conditional: public opinion effects will be magnified in states where judges face election. Alternatively, the effects of campaigns, or potential campaigns, on judge voting are hypothesized to be mitigated by campaign regulations intended to reduce issue content in judicial elections. We identified 31 states that adopted the 1990 ABA canons restricting candidates for judicial office from talking about issues likely to come before a court. Our expectation is that in these states, seated justices have less to fear if they find reversible error because future opponents cannot raise the issue in future elections.

To understand the impact of external pressure related to the death penalty, we consider the influence of pro-capital punishment interest groups on judicial decision making. Gray et al. (2005) classify interest organizations in the states based on general issue areas including legal matters, law enforcement, and government affairs. Using data they graciously supplied, we identify pro-capital punishment groups as organizations with public positions in support for capital punishment, such as victims' rights groups or associations in support of law enforcement and prosecuting attorneys. We hypothesize that the presence of state interest groups in favor of the death penalty will reduce the likelihood that a judge will find reversible error.

State supreme court judge ideology is measured using the PAJID scores developed by Brace, Langer, and Hall (2000).¹¹ This widely used measure has been demonstrated to be valid and reliable. The virtue of this measure, as compared to using party identification or the party of the appointing governor or legislature, is that when it comes to comparative state analysis, *party* can mean different things in different states. A southern Democrat may have more in common with a northern Republican than with northern Democrats. Within states Democrats may be consistently more liberal than Republicans, but across states this generalization does not always hold. The PAJID measure ranges from conservative to liberal and is comparable within and across states.

To judge the effects of competency of counsel, the use or nonuse of a public defender was identified using the Brace-Hall State Supreme Court Data Archive

¹¹PAJID integrates judge partisan affiliation and state ideological context at the time of judge selection. The measure has been used in research appearing in our profession's leading journals (e.g., Hall 2001; Langer et al. 2003).

(SSCDA). While we do not seek to cast aspersions on public defenders, it is commonly observed that appointed counsel in death penalty cases operate at a severe disadvantage (Bright 1994), and our expectation is that these cases present more grounds for reversal. However, the issue of competency of counsel has been a source of ideological division on the U.S. Supreme Court, as noted above. Consequently, we anticipate that the effects of issues of competency of counsel will interact with a judge's ideology, with more liberal judges more inclined to see it as a basis for reversal than their more conservative counterparts, a pattern that would mirror related debates on the U.S. Supreme Court.

We also expect the nature of the appeal and the nature of the crime to play a role in reversal votes. The SSCDA coded a wide variety of case attributes including additional crimes and legal issues raised in capital appeal. Thirty crime categories were factor analyzed to create a composite measure of aggravating factors. In addition, 24 legal issues were factor analyzed to create a composite score for appeal complexity. We expect aggravating factors and appeal complexity to reduce the likelihood that a judge will find reversible error.¹²

In our analysis of indirect effects of public opinion, we examine how the ideology of judges on state supreme courts (PAJID) correlates to the public opinion of state citizens (Death Penalty Support, Ideology). We consider how this correlation is conditioned by judicial elections and the presence or absence of capital punishment laws in states. Following the logic developed above, we hypothesize that public opinion, elections, and the presence of this publicly salient issue can operate to forge stronger links between judicial elites and masses.

Models of Reversible Error Votes in State Supreme Court Capital Cases

Direct Effects

Our first concern is with the direct effects public opinion may have on a judge's willingness to find reversible error in capital cases. Our expectation is that when public support for capital punishment is high, elected judges in states with the death penalty will be less likely to find reversible error.¹³ Alternatively, we expect that public support for

capital punishment will be less important for appointed judges because they do not face elections. We also gauge the effects of the alternative influences outlined above.

In addition to the direct effect of public opinion, restricted campaign speech, the existence of pro-capital punishment groups, judge ideological preferences, forms of attorney representation, and legal issues within a case should all weigh heavily on judge decisions to favor or reverse a death penalty sentence. We employ the basic interactive model described below:¹⁴

Votes for Death Penalty Reversal

$$= f(\text{Death Penalty Support, Elective Method of Retention, Death Penalty Support} \times \text{Elective Method of Retention, Campaign Restrictions, Pro-Cap. Pun. Interest Org., Judge Ideology, Public Defender, Judge Ideology} \times \text{Public Defender, Aggravating Factors, Appeal Complexity})$$

The task of collecting and coding case data has limited past studies of state supreme court decision making to relatively small subsets of states. The NSF-funded State Supreme Court Data Archive (SSCDA) has collected and coded case information and judge voting on all cases coming before state supreme courts in the 1995, 1996, and 1997 sessions.¹⁵ These comprehensive data allow us to systematically evaluate the direct effects of public opinion on decisions in death penalty cases.

Indirect Effects

Here we model the correlation between judge ideology and public support for the death penalty where judges do and do not face election. We expect the connection to be stronger where judges are elected. We also expect this connection to be conditioned by whether or not a state has a death penalty law. Where states have these laws, and where judges face elections, we expect the ideology of their judges to more closely correspond to the public opinion of their citizens. We also control for the effects of general public ideology using Erikson, Wright, and McIver's (1993) measure of public liberalism to see if death penalty

¹⁴Multiplicative interaction models must be used cautiously but are appropriate where hypotheses are premised on context-conditional assumptions (Brambor, Clark, and Golder 2006).

¹⁵The SSCDA was supported by National Science Foundation grants SBR 9617190, SBR 9616891, SES-051849, SES-0516409 and SES-0516600. While generally all state supreme court decisions from 1995 to 1997 were archived, in rare instances where state supreme court dockets exceeded 200 cases, 200 cases were randomly selected. For additional information related to the SSCDA, please visit <http://www.ruf.rice.edu/~pbrace/statecourt/>.

¹²The results of these factor analyses are available upon request.

¹³A Heckman procedure was used to consider if death penalty states differed from non-death penalty states and were somehow non-representative of all states. We found no evidence that the 38 states with the death penalty produced any significant selection bias.

support is exerting an independent influence on the ideology of elective state courts.¹⁶

We thus evaluate the following relationships:

Elective Selection Methods: Judge Ideology = $f(\text{State Public Ideology, Death Penalty Support, Death Penalty Enactment, Death Penalty Support} \times \text{Death Penalty Enactment})$

Appointive Selection Methods: Judge Ideology = $f(\text{Liberalism, Death Penalty Support, Death Penalty Enactment, Death Penalty Support} \times \text{Death Penalty Enactment})$

¹⁶PAJID is derived from the Berry et al. (1998) measure of state citizen (elected judges) and elite (appointed judges) ideology adjusted for 1) the party of the judge and 2) the year the judge was elected or appointed to the court.

It is reasonable to wonder if the results of our analysis of indirect relationships between PAJID (Brace et al. 2004) and the Erikson, Wright, and McIver (1993) public opinion measures of ideology were not structurally determined by how the PAJID measure was constructed. We do not believe this is so for the following reasons:

1. The Berry et al. measures of citizen and elite ideology from which PAJID is partly derived are correlated in excess of .66. As a consequence estimates of elected and appointed judge ideologies derived from these separate measures of ideology are very similar.

2. The Berry et al. measure of citizen ideology is not evenly correlated with the Erikson, Wright, and McIver public opinion-based measure of ideology: Berry et al. report a bivariate correlation of $-.68$ in the 1976–82 period and a $+.8$ correlation in the 1976–88 period (1998, 341). Essentially the same pattern holds for their elite ideology measure.

3. The Berry et al. measure is based on interest group ratings of elite (Congressional delegation) voting behavior, which they assume to be highly connected with state elite and citizen ideologies (1998, 339). PAJID similarly assumes that judge ideologies reflect state elite ideological climate at the time judges join their state supreme courts.

4. PAJID differs from the Berry et al. measures based on adjustments for the party of the judge and year of the judge's election/appointment to the bench.

5. Given a) the high correlation between the Berry et al. elite-based citizen and elite measures of ideology, b) the lack of consistent bivariate correlation between these measures and the Erikson, Wright, and McIver public opinion measure of state ideology, c) the related and amplified (see 4 above) lack of consistent bivariate correlation between PAJID and the Erikson, Wright, and McIver public opinion measure of state ideology, and d) the completely independent public opinion-based measure of state death penalty support, we do not believe the results in Table 4 are artifacts of measurement construction but instead reflect the influence of elective judge selection, the death penalty, and death penalty public opinion.

6. In sum, we believe that where the public has strong preferences, and where they can register those preferences in their choice of judges, there is a significant correlation between those preferences and judge ideology. We also acknowledge these inferences must be cautious until more refined measures are available.

For detailed descriptions of the variables used in each model, see Table 2.

Variants of pooled cross-sectional time-series analysis are used to estimate each model. In our analysis of direct effects, we control for possible interdependence in judge voting by using binomial generalized estimating equation (GEE) analysis with the data clustered on court case. This technique offers “the benefits of asymptotically-consistent variance-covariance estimates . . . even where the nature of dependence is unknown” (Zorn 2006, 329). Problems concerning conditional interdependence are exceptionally common within pooled cross-sectional time-series analysis; accordingly, utilization of GEE analysis is appropriate for the purpose of providing more precise estimates. Simple OLS analysis clustered on the state is used to investigate the indirect effects of public opinion on judge ideology.

Analysis

Direct Effects

Table 3 presents the analysis of judge decisions to reverse the death penalty. Eight of the 10 variables in the model attain statistical significance, and the two that are not significant correspond to our theoretical expectation but require some elaboration. Specifically, and as expected, death penalty support does not attain significance in non-elective states. The impact of death penalty opinion is contingent on judicial elections. In states that elect their judges, higher levels of public support for capital punishment are associated with significantly lower probabilities of voting to reverse capital sentences. Similarly, the effects of representation by a public defender exhibit no independent effect but are contingent on the ideology of a judge: more liberal judges are significantly more likely to find reversible error in cases where defendants were represented by public defenders. Both of these interactive relationships reveal that the effects of these contextual and case characteristics are conditioned by the judicial institution and the ideologies of judges.

The other variables in the model conform to expectation as well. Judge ideology is significantly and positively related to the likelihood of voting to overturn a capital sentence. The presence of campaign restrictions that limit candidates for judicial office from taking positions on capital punishment significantly increase the probability of reversal votes, as expected. Alternatively, the presence of pro-capital punishment interest organizations within a state significantly reduces the likelihood a judge will vote to reverse a capital conviction. Case characteristics also play a large role. Increases in aggravating

TABLE 2 Variable Descriptions

<i>Dependent Variables</i>	<i>Value Description</i>
Judge Ideology	0.01–1—score for judge liberalism, conservative to liberal (Source: Brace, Langer, and Hall 2000)
Votes for Death Penalty Reversal	1 for votes of death penalty reversal 0 otherwise (Source: SSCDA)
<i>Independent Variables</i>	
Aggravating Factors	–0.102–0.571—factor score of lower court convictions, lesser to greater amounts of convictions (Source: SSCDA)
Appeal Complexity	–1.06–2.91—factor score of appellate issues, lesser to greater amounts of issues (Source: SSCDA)
Campaign Restrictions	1 if state has enacted the Commit Clause 0 otherwise (Source: American Judicature Society)
Death Penalty Enactment	1 if state has enacted the death penalty 0 otherwise (Source: Death Penalty Information Center)
Death Penalty Support	0.01–1—score for public support for the death penalty, low to high support (Source: Brace et al. 2002)
Death Penalty Support × Death Penalty Enactment	0.01–1—score for public support for the death penalty in states with the death penalty, low to high support 0 for states without the death penalty (Sources: Brace et al. 2002; Death Penalty Information Center)
Death Penalty Support × Elective Method of Retention	0.01–1—score for public support for the death penalty in elective states, low to high support 0 if state uses gubernatorial or legislative appointments (Sources: Brace et al. 2002; American Judicature Society)
Elective Method of Retention	1 if state uses partisan, nonpartisan, or retention elections 0 if state uses gubernatorial or legislative appointments (Source: American Judicature Society)
Pro-Capital Punishment Interest Organizations	1 if state possesses pressure groups that advocate capital punishment 0 otherwise (Source: Gray et al. 2005)
Judge Ideology	0.01–1—score for judge liberalism, conservative to liberal (Source: Brace, Langer, and Hall 2000)
Judge Ideology × Public Defender	0.01–1—score for judge liberalism in cases with public defender, conservative to liberal 0 for cases without public defender (Sources: Brace, Langer, and Hall 2000; SSCDA)
State Public Ideology	–100–0—score of state public ideology, conservative to liberal (Source: Erikson, Wright, and McIver 1993)
Public Defender	1 for cases with public defender 0 otherwise (Source: SSCDA)

factors and appeal complexity both reduce the probability of a reversal vote significantly.

Substantively, the variable with the most impact is appeal complexity. Going from the least to the most com-

plex cases is estimated to reduce the likelihood of a reversal vote by 29.3%. The interactive effects of judge ideology and public defender register the next largest substantive effect. Going from the most conservative to most liberal

TABLE 3 Direct Effects: GEE Logistic Regression of Votes for Death Penalty Reversal

Variable	GEE Logistic Regression Model Coefficient (S.E.)	Δ Pr
Constant	-2.8400 (0.058)	-
Death Penalty Support	1.8857 (2.402)	-
Elective Method of Retention	3.3980* (1.883)	-
Death Penalty Support \times Elective Method of Retention	-4.2620* (2.503)	-13.2%
Campaign Restrictions	0.1688* (0.077)	3.1%
Pro-Capital Punishment Interest Organization	-0.2849* (0.068)	-5.2%
Judge Ideology	0.4452* (0.228)	7.7%
Public Defender	0.0780 (0.139)	-
Judge Ideology \times Public Defender	0.5362* (0.317)	18.5%
Aggravating Factors	-0.5373* (0.275)	-6.2%
Appeal Complexity	-0.4702* (0.041)	-29.3%
Wald Chi ²	257.36*	
Number of Observations	5643	
Number of Groups	889	

Note: Statistically significant parameter estimates are denoted by *($p \leq .05$).

judge ideology in these cases produces an 18.5% difference in the likelihood of a reversal vote. The interactive effects of public opinion are similarly large: in elective states going from least to most public support for the death penalty produces a 13.2% reduction in the likelihood of a reversal vote. Supporting the attitudinal model of judicial decision making, going from the most to least conservative judge ideology produces a 7.7% lower likelihood of a reversal vote. This effect is supplemented by the effects of aggravating factors where going from the lowest to the highest values on this indicator produces a 6.2% reduction in the likelihood of a reversal vote. Finally, the impact of pro-capital punishment groups (5.2% lower) and campaign restrictions (3.1% higher) produce

less pronounced but nonetheless significant changes in the likelihood of reversal votes.

Taken together, this model produces a picture of judicial voting that weaves together the fundamental threads commonly applied to judicial behavior. Case characteristics in the form of appeal complexity, whether or not the defendant was represented by a public defender, and aggravating factors all emerge as statistically significant and substantively important influences. In addition, the ideology of judges also plays a major role independently, and as an interactive influence in cases where issues concerning public defenders were present. Beyond this, we see that the political environments of state supreme courts also played a very strong role. Death penalty opinion in elective states, the presence of pro-death penalty groups, and the presence or absence of judicial campaign restrictions all shaped the likelihood of death penalty votes. Death penalty votes reflect the issues in the case at hand, the ideological preferences of the judges deciding the case, and the political environments in which the judges operate. On this issue, public opinion plays a very notable role and links the public's preferences to judicial outcomes where judges face elections.

Indirect Effects

One of the notable findings of the foregoing results is the substantive and statistical significance of judge ideology on capital punishment votes. To a significant degree, judges vote their ideological preferences in these cases. If these ideological preferences are also connected to public preferences, it might also be said the votes reflect elite-mass linkages. Public preferences translate into political outcomes through elites that mirror those public preferences.

The results presented in Table 4 illustrate the connections between judge ideology and public opinion. We separate appointive and elective courts. For a conservative test we control for the effects of general public ideology. Our interest is with the correlation between judge ideology and public death penalty support. We expect this effect to be conditioned by the presence of death penalty laws. In elective states that have death penalty laws, we expect the public's opinion about the death penalty will be significantly correlated with judge ideology. These results are clearly evident in Table 4. Notably, and as hypothesized, the impacts of the two measures of public opinion are significant in states that elect their judges but not in states that appoint their judges. Moreover, public death penalty support interacts significantly with the presence

TABLE 4 Indirect Effects: OLS Regression of Judge Ideology

Variable	Appointive Selection Methods	Elective Selection Methods
	OLS Regression Model Coefficient (S.E.)	OLS Regression Model Coefficient (S.E.)
Constant	-3.0392 (3.870)	-0.8348 (0.600)
State Public Ideology	0.0023 (0.006)	0.0101* (0.002)
Death Penalty Support	5.2261 (5.539)	2.0355* (0.883)
Death Penalty Enactment	3.9094 (3.901)	1.9085* (0.752)
Death Penalty Support × Death Penalty Enactment	-5.8457 (5.625)	-2.7426* (1.057)
R ²	0.29	0.49
Number of Observations	100	80

Note: Statistically significant parameter estimates are denoted by * ($p \leq .05$).

of a death penalty law. In states where supreme court judges face election, and where these judges must render capital punishment decisions, stronger public support for the death penalty produces significantly more conservative judges and, reflecting on the results from Table 3, these conservative judges are more likely to uphold capital convictions.

Conclusion

Consistent with our hypotheses, these findings reveal both a direct and indirect linkage between state judicial decision making and public attitudes. In states that retain their judges electively, a direct effect exists which encourages judges to affirm lower court punishments where the public is most supportive of capital punishment. Moreover, and as expected, other factors play a prominent role, including judge preferences, interest groups, and case-related characteristics such as quality of counsel, complexity of appeal, and aggravating factors. In sum, elections and strong public opinion exert a notable and significant direct influence on judge decision making in these cases, but these effects do not outweigh the impact of case characteristics and judge ideology. In close cases, however, these differences could literally mean the difference between life and death. In addition, strong death penalty public opinion also played a significant role in shaping the ideological character of state supreme courts in states with

capital punishment where judges faced election. In those states, strong public support for the death penalty produced significantly more conservative courts than would be predicted by state ideology alone.

In the period studied, the death penalty presented a unique issue that cut across normal partisan cleavages in a manner that was perhaps unique in contemporary politics. As noted above, the death penalty is a morality policy and these policies are notable for their saliency (Mooney and Lee 2000). Moreover, the framing of crime issues in judicial campaigns and elsewhere probably elevated public support for the punishment independent of levels of violent crime (Baumer, Messner, and Rosenfeld 2003, 866). Furthermore, because this is an issue state supreme courts could not avoid, the issue was uncommonly salient where the death penalty was law and where state supreme court judges faced election. Under these very special conditions, the composition of courts and judicial outcomes were shaped significantly by public opinion where judges were elected.

In light of the uniqueness of this issue, any inference regarding the independence of an elected judiciary must be cautious. The death penalty is but one of a host of issues decided by state supreme courts and it is unlikely any of those other issues capture the public's attention in even a remotely similar manner. However, the results presented here also reveal that the death penalty and public support for that punishment played a significant role in shaping the overall ideology of state supreme courts that faced elections. While only one issue, it was a highly salient

wedge issue that appears to have produced significantly more conservative courts. As noted by Baum, "[b]ecause judges' preferences are so important to their choices, the membership of a court has considerable impact on the content of its decisions" (2008, 269). Elected supreme courts in states with capital punishment were likely more conservative across a range of issues in the presence of strong public sentiment about the death penalty. Hence, while the public may only rarely register strong, cross-cutting opinions on select issues like the death penalty, in the final analysis this may have very broad implications for other areas of law. A single highly salient issue might produce broad shifts in the basic ideological orientation of courts across much less salient issues and have much broader consequences for the interpretation and application of laws.

References

- American Bar Association Commission on the 21st Century Judiciary. 2003. *Justice in Jeopardy*. Chicago: American Bar Association.
- American Judicature Society. 2004. "Judicial Selection in the States." <http://www.ajs.org/js/>
- Arnold, R. Douglas. 1990. *The Logic of Congressional Action*. New Haven, CT: Yale University Press.
- Baum, Lawrence A. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: University of Michigan Press.
- Baum, Lawrence A. 2003. "Judicial Elections and Judicial Independence: The Voter's Perspective." *Ohio State Law Journal* 64(1): 13–41.
- Baum, Lawrence A. 2008. *American Courts: Process and Policy*. New York: Houghton Mifflin.
- Baumer, Eric P., Steven F. Messner, and Richard Rosenfeld. 2003. "Explaining Spatial Variation for Capital Punishment: A Multilevel Analysis." *American Journal of Sociology* 108(4): 844–75.
- Berry, William D., Evan J. Ringquist, Richard C. Fording, and Russell L. Hanson. 1998. "Measuring Citizen and Government Ideology in the American States, 1960–93." *American Journal of Political Science* 42(1): 327–48.
- Brace, Paul, Kevin Arceneaux, Martin Johnson, and Stacy G. Ullig. 2004. "Does State Political Ideology Change Over Time?" *Political Research Quarterly* 57(4): 529–40.
- Brace, Paul, and Melinda Gann Hall. 1997. "The Interplay of Preferences, Case Facts, Context, and Rules in the Politics of Judicial Choice." *Journal of Politics* 59(4): 1206–31.
- Brace, Paul, and Melinda Gann Hall. 2005. "Is Judicial Federalism Essential to Democracy? State Courts in the Federal System." In *Institutions of American Democracy: The Judicial Branch*, ed. Kermit L. Hall and Kevin T. McGuire. New York: Oxford University Press, 174–99.
- Brace, Paul, Laura Langer, and Melinda Gann Hall. 2000. "Measuring the Preferences of State Supreme Court Judges." *Journal of Politics* 62(2): 387–413.
- Brace, Paul, Kellie Sims-Butler, Kevin T. Arceneaux, and Martin Johnson. 2002. "Public Opinion in the American States: New Perspectives Using National Survey Data." *American Journal of Political Science* 46(1): 173–89.
- Brambor, Thomas, William Roberts Clark, and Matt Golder. 2006. "Understanding Interaction Models: Improving Empirical Analyses." *Political Analysis* 14: 63–82.
- Bright, Stephen B. 1994. "Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer." *Yale Law Journal* 103: 1835–83.
- Bright, Stephen B., and Patrick J. Keenan. 1995. "Judges and the Politics of Death: Deciding between the Bill of Rights and the Next Election in Capital Cases." *Boston University Law Review* 75(3): 759–835.
- Bryce, James, Viscount. 1888. *The American Commonwealth*. New York: Macmillan, 1914.
- Burstein, Paul. 2003. "The Impact of Public Opinion on Public Policy: A Review and an Agenda." *Political Research Quarterly* 56(1): 29–40.
- Carp, Robert A., and Ronald Stidham. 1985. *Federal Courts*. Washington, DC: Congressional Quarterly Press.
- Champagne, Anthony. 2001. "National Summit on Improving Judicial Selection: Interest Groups and Judicial Elections." *Loyola of Los Angeles Law Review* 34: 1391–1409.
- Dahl, Robert. 1971. *The New Haven Community Study*. Ann Arbor: Inter-university Consortium for Political Research.
- Death Penalty Information Center. 2004. "Facts about the Death Penalty." <http://www.deathpenaltyinfo.org/FactSheet.pdf>.
- Ellsworth, Phoebe C., and Samuel R. Gross. 1994. "Hardening of the Attitudes: Americans' Views on the Death Penalty." *Journal of Social Issues* 50: 19–52.
- Erikson, Robert S., Gerald C. Wright, and John P. McIver. 1993. *Statehouse Democracy: Public Opinion and Policy in the American States*. New York: Cambridge University Press.
- Fan, David P., Kathy A. Keltner, and Robert O. Wyatt. 2002. "A Matter of Guilt or Innocence: How News Affects Support for the Death Penalty in the United States." *International Journal of Public Opinion Research* 14(4): 439–52.
- Geer, John. 1996. *From Tea Leaves to Opinion Polls*. New York: Columbia University Press.
- Gibson, James L. 1990. "Pluralism, Federalism, and the Protection of Civil Liberties." *Western Political Quarterly* 43(3): 511–33.
- Gibson, James L. 2008. "Challenges to the Impartiality of State Supreme Courts: Legitimacy Theory and 'New-Style' Judicial Campaigns." *American Political Science Review*. 102(1): 59–75.
- Gray, Virginia, and David Lowery. 1996. *The Population Ecology of Interest Groups*. Ann Arbor: University of Michigan Press.
- Gray, Virginia, David Lowery, Matthew Fellowes, and Jennifer Anderson. 2005. "Understanding the Demand-Side of Lobbying: Interest System Energy in the American States." *American Politics Research* 33(1): 404–34.
- Hall, Melinda Gann. 1987. "Constituent Influence in State Supreme Courts: Conceptual Notes and Case Study." *Journal of Politics* 49(4): 1117–24.
- Hall, Melinda Gann. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *American Political Science Review* 95(2): 315–30.

- Hall, Melinda Gann, and Chris W. Bonneau. 2006. "Does Quality Matter: Challengers in State Supreme Court Elections." *American Journal of Political Science* 50(1): 20–33.
- Harry, Jennifer L. 2000. "Death Penalty Disquiet Stirs Nation." *Corrections Today*, December: 122–28.
- Hoffman, Morris B., Paul H. Rubin, and Joanna M. Shepherd. 2005. "An Empirical Study of Public Defender Effectiveness: Self-Selection by the Marginally Indigent." *The Ohio State Journal of Criminal Law* 3(1): 223–55.
- Huber, Gregory A., and Sanford C. Gordon. 2004. "Accountability and Coercion: Is Justice Blind When It Runs for Office?" *American Journal of Political Science* 48(2): 247–63.
- Hurley, Patricia A., and Kim Quaile Hill. 2003. "Beyond the Demand-Input Model: A Theory of Representational Linkages." *Journal of Politics* 65(2): 304–26.
- Jones, Bryan D. 1994. *Reconceiving Decision-Making in Democratic Politics*. Chicago: University of Chicago Press.
- Langer, Laura, Jody McMullen, Nicholas P. Ray, and Daniel D. Stratton. 2003. "Recruitment of Chief Justices on State Supreme Courts: A Choice between Institutional and Personal Goal." *Journal of Politics* 65(3): 656–75.
- McGuire, Kevin T., and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." *Journal of Politics* 66(4): 1013–33.
- Miller, Warren E., and Donald E. Stokes. 1963. "Constituency Influence in Congress." *American Political Science Review* 57(1): 45–56.
- Mishler, William, and Reginald S. Sheehan. 1993. "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87(1): 87–101.
- Mooney, Christopher, and Mei-Hsien Lee. 2000. "The Influence of Values on Consensus and Contentious Morality Policy: U.S. Death Penalty Reform, 1956–1982." *Journal of Politics* 62(1): 223–39.
- Montesquieu, Charles D. [1750] 1949. *The Spirit of the Laws*. Trans. Thomas Nugent. New York: Hafner.
- Norpoth, Helmut, and Jeffrey A. Segal. 1994. "Popular Influence on Supreme Court Decisions." *American Political Science Review* 88 (3): 711–16.
- Norrander, Barbara. 2000. "The Multi-Layered Impact of Public Opinion on Capital Punishment Implementation in the American States." *Political Research Quarterly* 53(4): 771–93.
- Pound, Roscoe. [1906] 1956. "The Causes of Popular Dissatisfaction with the Administration of Justice." *American Bar Association Rep.* 29: 395, 410–11 (reprinted in *Baylor Law Review* 8: 1, 19–20).
- Republican Party of Minnesota, et al. v. White*. 2002. 536 U.S. 765.
- Richardson, Richard J., and Kenneth N. Vines. 1970. *The Politics on Federal Courts: Lower Courts in the United States*. Boston: Little, Brown.
- Rottman, David B., and Roy A. Schotland. 2001. "National Summit on Improving Judicial Selection: What Makes Judicial Elections Unique?" *Loyola of Los Angeles Law Review* 34: 1369–73.
- Schlup v. Delo*. 1995. 513 U.S. 298.
- Segal, Jeffrey A., and Harold J. Spaeth. 1993. *Supreme Court and the Attitudinal Model*. New York: Cambridge University Press.
- Songer, Donald R., Jeffrey A. Segal, and Charles M. Cameron. 1994. "The Hierarchy of Justice—Testing a Principal-Agent Model of Supreme-Court Circuit-Court Interactions." *American Journal of Political Science* 38(3): 673–96.
- Soss, Joe, Laura Langbein, and Alan R. Metelko. 2003. "Why Do White Americans Support the Death Penalty?" *Journal of Politics* 65(2): 397–421.
- Tocqueville, Alexis de. 1831. *Democracy in America*. Ed. Phillips Bradley. New York: Vintage Press, 1945.
- Traut, Carol Ann, and Craig Emmert. 1998. "Expanding the Integrated Model of Judicial Decision Making: The California Justices and Capital Punishment." *Journal of Politics* 60(4): 1166–80.
- Williams v. Taylor*. 2000. 529 U.S. 362.
- Zaller, John R. 1992. *The Nature and Origins of Mass Opinion*. New York: Cambridge University Press.
- Zorn, Christopher. 2006. "Comparing GEE and Robust Standard Errors for Conditionally Dependent Data." *Political Research Quarterly* 59(3): 329–41.