

Professionalization and State Courts of Last Resort

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Abstract

Elsewhere I have argued that measures of legislative professionalization assess individual and organizational capacity to generate and digest information in the policy making process. In this paper I adapt my measure of state legislative professionalization to state courts of last resort, attempting to assess the capacity of those bodies to generate and digest information in making legal decisions. Specifically, I examine judicial salaries, a court's level of control over its docket, and the number of law clerks employed by the justices. After presenting two professionalization measures and investigating their validity, I examine explanations for their observed variance across the states. I conclude by speculating about the measures' utility in studies on state courts of last resort.

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Professionalization and State Courts

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Measures of legislative professionalization are well established and have proven useful in answering a number of research questions (Squire 2007; Squire and Hamm 2005, 95-97). Court professionalization measures are less well developed and less often deployed. In this paper I devise a measure of professionalization of state courts of last resort based on my measure of state legislative professionalization. I produce two professionalization indices for the 50 state courts of last resort and I assess their validity. Comparisons with my state legislative professionalization index also shed light on the court indices' soundness. I conclude by offering some thoughts on the utility of the court measures.

Existing Measures of Court Professionalization

State court professionalization was first measure by Glick and Vines (1973, 11-13). They conceived of professionalization as essentially the extent to which a state court system emulated American Bar Association model plans. Their measure was composed of five components: (1) how closely judicial selection procedures followed the ABA selection model, (2) how closely state court organization approximated the ABA court organization model, (3) the presence of a professional court administrator and the size of the staff attached to that position, (4) how closely tenures of office for major court and

appellate court judges followed ABA guidelines, and (5) judicial salaries. The resulting professionalization scores ranged from a high of 21.7 (California) to a low of 3.4 (Mississippi). It is important to note that the scores were intended to measure legal professionalization in the state court system, not simply in the state court of last resort. Nonetheless, the measure has been employed in a number of different studies to measure the some aspect of state court of last resort behavior or capacity (e.g., Berkowitz and Clay 2006; Caldeira 1985; Gryski, Main, and Dixon 1986; Harris 1985).

More recently, Brace and Hall (2001) used the Glick and Vines measure as a jumping off point in developing their own professionalization measures for state courts of last resort and state lower courts. Like the Glick and Vines measure, the Brace and Hall measure of state court of last resort professionalization also consists of five components: (1) the number of clerks for the chief justice, (2) the number of clerks for the associate justices, (3) the difference between the justice salary and the average judicial employee salary, (4) the number of authorized supreme court justices per 1,000 state residents, and (5) the size of the court's docket. Using factor analysis Brace and Hall determined that the first three items were positively associated with professionalization and the last two items were negatively associated with it. Their measure produced professionalization scores ranging from a high of 4.83 (California) to a low of -1.25 (North Dakota).

A New Measure of State Court of Last Resort Professionalization

I approach measuring the professionalization of state courts of last resort from a different direction, using measures of state legislative professionalization as a starting point. Measures of legislative professionalization are well established in the study of

state politics and are designed to measure the capacity of legislators and legislatures to generate and digest information in the policy making process. Almost every measure of legislative professionalization incorporates data on legislator salaries, time demands of service, and staff resources (Carey, Niemi and Powell 2000, 694; Squire 1992; 2000; 2007; Thompson and Moncrief 1992, 199). My measure of legislative professionalization (Squire 1992; 2000; 2007) compares these components to those found in the U.S. Congress. Thus my measure assesses state legislative informational capacity relative to that of the U.S. Congress.

The measure of state court of last resort professionalization I propose here is derived from my measure of state legislative professionalization. Two of the components used to measure legislative professionalization—salary and staff—translate directly into the measure for court professionalization. I use data on the salaries paid to justices on the state court of last resort, gathered from the National Center for State Courts', "Survey of Judicial Salaries." Every state pays its court of last resort justices an annual salary, which in 2004 ranged from a high of \$175,575 in California to a low of \$95,000 in West Virginia.¹ Salary is incorporated into the court measure on the simple assumption that courts that offer higher pay attract and keep better qualified judges.

Every state court of last resort also provides its members law clerks to assist them with legal work. The number of clerks varies across the states, from less than one clerk per justice in Alabama, to more than five clerks per justice in Pennsylvania. I chose to use only the number of clerks provided to each associate justice, although in some states the chief justice is entitled to additional assistance.² My supposition is that a court's

ability to generate and digest information increases with the number of law clerks working with the justices.

Unlike salary and staff, the third component of legislative professionalization, time demands of service, does not translate well to a measure of court professionalization. The idea behind examining the number of days in a legislative session is that legislatures with longer sessions have more time to develop and evaluate policy proposals. State legislatures, of course, vary considerably in session length. In contrast, every state court of last resort is a full-time institution. Thus it makes little sense to measure how many days a state court of last resort sits to hear cases. Instead, the analog to a legislature's ability to develop and evaluate policy may be the extent to which an appellate court can focus its attention on the most pressing legal problems brought before it. This suggests that a state court of last resort's control of its docket is linked to its level of professionalization, a notion hinted at by the results of Brace and Hall's (2001) factor analysis. Docket control gives an appellate court the ability to manage the number of cases it hears and to select the cases which it deems are the most important to decide. Appellate courts that can largely determine which cases they hear have a greater ability to craft their decisions compared with appellate courts that cannot pick and choose.

I have devised two different ways to measure docket control. Both draw on data gathered by the Court Statistics Project of the National Center for State Courts. The first measure uses the Court Statistics Project's listing of mandatory and discretionary jurisdictions in for each state court of last resort for 2004. I coded whether a state court of last resort's jurisdiction was discretionary in seven case areas: administrative agency,

civil, disciplinary, juvenile, interlocutory, non-capital crime, and original proceedings. This created a scale running from 0, if none of the case areas was discretionary, to 7 if all of the case areas were discretionary. If a case area was spilt with some cases being discretionary and others mandatory I gave a score of .5. Scores on this measure of docket control ranged from 0 in three states to 7 in four states, with a median score of 4.

The second measure relies on 2004 caseload data. Among other figures, the Court Statistics Project reports the total number of mandatory cases filed with each state's court of last resort and the total number of discretionary petitions filed. I used these numbers to calculate the percentage of each state court of last resort's docket composed of discretionary cases.³ Scores on the measure of docket control using the percentage of discretionary cases range from 0 in two states to 1 in four states, with a median of .795.⁴ The two measures of docket control correlate at .744 ($p < .001$, two-tailed).

Finally, in calculating my measure I used the United States Supreme Court as a baseline against which to measure the professionalization of state courts of last resort. Thus, each of the components of the professionalization measure is evaluated relative to the score given to the United States Supreme Court on that same dimension, producing a percentage score.⁵ The three percentage scores were added together—meaning they are equally weighted—and divided by 3.⁶ This produces a score where 1 indicates perfect resemblance to the United States Supreme Court and lower scores indicate progressively less resemblance.

It is important to note what is not incorporated into this measure of court professionalization. Judicial selection methods, which are part of the Glick and Vines

measure, are not included in this measure because in my view they do not contribute to a court's ability to generate and digest information. Different selection processes may influence case outcomes but not the quality of the information that goes into them. Similarly, court organization, another component of the Glick and Vines measure, does not necessarily touch on the question of how well equipped a court is to handle the requests made of it. Docket size, employed in the Brace and Hall measure, is excluded because it is a function of state population size and the structure and procedures of the court system. As argued above, it is not the number of cases filed with the court of last resort that is important; rather it is the court of last resort's ability to control the cases it hears that matters.

The Measures of State Court of Last Resort Professionalization

Given the two different measures of docket control I calculated two versions of my professionalization measure for the 50 state courts of last resort.⁷ The scores are given in tables 1 and 2. Not surprisingly, the two measures are highly correlated: .918 ($p < .000$, two-tailed). California sits atop both rankings and along with Pennsylvania in the discretionary cases index manages to secure scores slightly above the United State Supreme Court.⁸ North Dakota anchors the bottom in each index.

(Tables 1 and 2 about here)

A quick scan of the rankings and scores in tables 1 and 2 might raise some initial doubts about the measures' validity. The rankings and scores for Alaska, Louisiana and

West Virginia, for example, might strike some as too high, while those for Massachusetts and Maryland might seem too low. Some comfort can be taken from the finding that both court professionalization measures correlate well with the Brace and Hall (2001) measure: the docket measure at .622 ($p < .001$, two-tailed) and the discretionary cases measure at .587 ($p < .001$, two-tailed).⁹ Like my measures, the Brace and Hall index ranks California first and North Dakota last. There is also consistency with the seemingly odd cases. The Brace and Hall measure ranks Louisiana seventh, Alaska eighth and West Virginia ninth, with Maryland and Massachusetts placing twenty-first and twenty-fourth respectively (all out of 47 states). My measures also correlate at reasonable levels with the Glick and Vines measure, even at a distance of over 30 years and without much overlap in components: the docket measure at .414 ($p < .003$, two-tailed) and the discretionary cases measure at .386 ($p < .006$, two-tailed). So, at a minimum, my court professionalization measures appear to be tapping into the same concept as the other professionalization measures.

But is that concept court professionalization? I can offer two disparate predictive tests that suggest my measures are valid. The first test deals with how state courts of last resort deal with discretionary cases. We might hypothesize that the more professional the court the lower the percentage of discretionary petitions filed with it that it will opt to hear. The Court Statistics Project provides limited data with which to test this hypothesis. The correlations between the two versions of the professionalization measure and the percentage of discretionary petitions granted in the 23 states for which those data are available are -.323 ($p < .132$, two-tailed) for the docket variant, and -.236 ($p < .279$, two-tailed) for the discretionary percentage variant. Although the correlations are of

dubious statistical significance, they are in the predicted direction and are of reasonable size.

Another test of predictive validity might be supplied by citation data. A study of citations of state constitutional decisions by Cauthen (2003) provides data on the eleven state courts of last resort whose decisions have been most cited by other state courts of last resort over a 25 year period. The eleven states and their citation counts are given in table 3, along with their professionalization scores. With two notable exceptions—Massachusetts and Oregon—the professionalization scores match up well with the citation counts. Highly professional courts in Pennsylvania, California, and New York appear at the top of the citation list. Perhaps more importantly, Louisiana and Alaska, two of the “surprise” professionalization cases, also make the citation list.¹⁰ These results lend credence to the claim that the two measures of professionalization are valid.

(Table 3 about here)

Comparing State Court of Last Resort Professionalization and State Legislative Professionalization

How do the professionalization measures of state courts of last resort compare with the measure of state legislative professionalization from which they are derived? Given that the validity of my legislative professionalization is reasonably well established (Squire 2007), seeing how the court professionalization measures stack up against it might shed additional light on their validity. Table 4 provides descriptive statistics for the three measures.

(Table 4 about here)

On their face, both variants of the court professionalization measure match up to the legislative professionalization measure in ways we might anticipate. Most notably, state courts of last resort are much more like the United State Supreme Court than state legislatures are like Congress. I would argue that this is what we should expect. State courts of last resort are full-time organizations operating in a closed world of legal professionals. It seems likely that the legal and business communities would back the idea that justices should be paid like professionals and that the courts they serve be provided the resources needed to keep the state legal system functioning well. Moreover, state courts of last resorts are small operations—the number of justices varies only between five and nine—making them relatively inexpensive to fund. Consequently, even small states can afford to maintain professional courts of last resort.

Take, for example, perhaps the most extreme case: the New Hampshire Supreme Court and the New Hampshire General Court. The former scores highly in terms of professionalization among state courts of last resort, the latter ranks dead last among state legislatures (Squire 2007). On the two directly comparable dimensions of professionalization, the New Hampshire Supreme Court far outstrips the state legislature. In 2004 the five justices were each paid \$113,266, costing the state a total of \$566,330. That same year the 424 state legislators were each paid \$100, at a total cost to the state of \$42,400. The justices each had two law clerks working for them. Each state legislator had .39 of a staff member. Thus the two institutions are treated very differently. New

Hampshire is willing to accept an amateur state legislature but not an amateur state court of last resort.

Still, the vast gap in professionalization levels between state courts of last resort and state legislatures is startling. The maximum legislative professionalization score falls roughly around the average professionalization score for state courts of last resort. The lowest scoring state court of last resort places well above the average state legislative professionalization score. Most impressively, the highest scoring courts of last resort resemble the United States Supreme Court to a degree that the highest scoring state legislatures do not remotely approach.

Even with these substantial differences, however, are the variations in court of last resort professionalization across the states explained by the same variables as the variations in legislative professionalization? Table 5 presents three simple OLS equations built around an explanation for legislative professionalization advanced in Squire and Hamm (2005, 86-95). The main theoretical idea is that total state income (statistically synonymous with total population but theoretically preferred) drives professionalization; wealthier states can more easily carry the financial burden of generously funding government institutions because the costs are spread over more taxpayers. Also entering per capita state income into the equations tests whether it is really total state wealth that drives professionalization or if professionalization is simply a product of wealthy societies regardless of their population sizes.¹¹ Competing hypotheses, however, can be conjured. Entering a variable measuring mean support for the Democratic Party's presidential candidates in the previous two elections taps the hypothesis that Democrats are more supportive of increasing the power and capacity of

governmental institutions than are Republicans and therefore more supportive of professionalization. Incorporating a dummy variable for the South allows the cultural argument that region drives institutional differences to be tested.

(Table 5 about here)

The results of the three OLS equations are strikingly similar. In each equation total state income is statistically significant and substantively large. In the courts equations, the difference in professionalization scores between the wealthiest state (California) and the least wealthy state (Vermont) work out to .468 with the dockets version as the dependent variable, and .561 with the discretionary cases version as the dependent variable. Per capita income is neither statistically nor substantively significant. Thus, it appears that it is a state's total wealth and not its per capita wealth that provides it the resources to support more professionalized governmental institutions.

Competing hypotheses do not fare well. The partisanship coefficient takes the correct sign and approaches statistical significance in all three equations, but none is of impressive size. The coefficient for the South dummy variable takes the predicted sign and is statistically significant only in the state legislative equation. In both courts equations the coefficient takes the wrong sign and fails to achieve statistical significance. What these findings suggest is that, unlike state legislatures, state courts of last resort in the South are no different from their counterparts in the rest of the country.

Thoughts on Using the Courts of Last Resort Professionalization Measures

By all appearances the two measures of state court of last resort professionalization presented here can be used interchangeably. Preference for one or the other may be simply a matter of taste or comfort level with a particular approach to measuring docket control. The measures share several of the virtues of their companion state legislative measure. It is easy to understand the variables that go into computing the measures and how the computations creating the measures are carried out. Perhaps even more importantly, the professionalization scores are easy to interpret and therefore intuitively appealing. There are, however, some potential difficulties with the courts measures. Generating court professionalization measures for additional years may prove challenging because of a lack of easily accessed information on staffing levels. As with the measures' legislative counterpart, court expenditure data probably serve as an acceptable substitute. And it is undoubtedly more useful to focus on the professionalization scores rather than rankings because, for example, tweaks to the measure of docket control might shuffle the rankings among state courts with relatively close scores.

Finally, it is worth contemplating the sort of questions these scores might help answer. Certainly, they can be employed in addressing the kinds of questions earlier measures have been used to address. We might conjecture that professionalization should be positively associated with court reputations or citation counts (Caldeira 1985). Case decisions may be influenced by the informational capacity of courts, as Brace and Hall (2001) have found. The willingness to break new legal ground might be linked to court professionalization levels. In general, the professionalism measures should prove

useful in any study where the informational capacity of state courts of last resorts needs to be examined separate from judicial selection processes or court organizational structures.

References

- Berkowitz, Daniel and Karen Clay. 2006. "The Effect of Judicial Independence on Courts: Evidence from the American States." Journal of Legal Studies 35:399-440.
- Brace, Paul, and Melinda Gann Hall. "'Haves' versus 'Have Nots' in State Supreme Courts: Allocating Docket Space and Wins in Power Asymmetric Cases." Law & Society Review 35:393-417.
- Bullock, Richard P. 1991. "The Declaration of Rights of the Louisiana Constitution of 1974: The Louisiana Supreme Court and Civil Liberties." Louisiana Law Review 51:787-820.
- Caldeira, Gregory A. 1985. "The Transmission of Legal Precedent: A Study of State Supreme Courts." American Political Science Review 79:178-94.
- Carey, John M., Richard G. Niemi, and Lynda W. Powell. 2000. "Incumbency and the Probability of Reelection in State Legislative Elections." Journal of Politics 62:671-700.
- Cauthen, James N. G. 2003. "Horizontal Federalism in the *New Judicial Federalism: A Preliminary Look at Citations*." Albany Law Review 66:783-95.
- Gilbertson, Seth Forrest. 2006. "New Hampshire: 'Live Free or Die,' But in the Mean Time . . ." Albany Law Review 69:591-643.
- Glick, Henry Robert, and Kenneth N. Vines. 1973. State Court Systems. (Englewood Cliffs, NJ: Prentice-Hall.
- Gryski, Gerard S., Eleanor C. Main; William J. Dixon. 1986. "Models of State High Court Decision Making in Sex Discrimination Cases." Journal of Politics 48:143-55.

- Harris, Peter. 1985. "Ecology and Culture in the Communication of Precedent among State Supreme Courts, 1870-1970." Law & Society Review 19:449-86.
- Motta, Christine M. 1997. "The Supreme Court of Alaska: Unique and Independent Like the People of the Last Frontier." Albany Law Review 60:1727-50.
- Squire, Peverill. 1992. "Legislative Professionalization and Membership Diversity in State Legislatures." Legislative Studies Quarterly 17:69-79.
- Squire, Peverill. 2000. "Uncontested Seats in State Legislative Elections." Legislative Studies Quarterly 25:131-46.
- Squire, Peverill. 2007. "Measuring Legislative Professionalism: The Squire Index Revisited." State Politics and Policy Quarterly 7:211-27.
- Squire, Peverill, and Keith E. Hamm. 2005. 101 Chambers: Congress, State Legislatures, and the Future of Legislative Studies. OH: Ohio State University Press.
- Thompson, Joel A., and Gary F. Moncrief. 1992. "The Evolution of the State Legislature: Institutional Change and Legislative Careers." In Changing Patterns in State Legislative Careers, eds. Gary F. Moncrief and Joel A. Thompson. Ann Arbor, MI: University of Michigan Press.

Table 1. State Court Professionalism, 2004 (using docket score)

Rank	State	Score	Rank	State	Score
1	CA	1.004	26	MA	0.575
2	MI	0.878	27	CT	0.571
3	PA	0.876	28	NE	0.562
4	WV	0.813	29	NC	0.548
5	SC	0.728	30	HI	0.532
6	NY	0.724	31	RI	0.530
7	TN	0.717	32	OR	0.526
8	NJ	0.712	33	MD	0.513
9	FL	0.707	34	AL	0.513
10	NH	0.694	35	ID	0.512
11	AK	0.690	36	AR	0.506
12	IL	0.690	37	CO	0.485
13	TX	0.670	38	KS	0.477
14	LA	0.667	39	MT	0.473
15	VA	0.661	40	NM	0.466
16	GA	0.644	41	IA	0.460
17	WA	0.640	42	OK	0.445
18	MO	0.640	43	NV	0.407
19	WI	0.629	44	ME	0.406
20	KY	0.621	45	WY	0.394
21	DE	0.618	46	MS	0.360
22	OH	0.601	47	VT	0.352
23	AZ	0.598	48	SD	0.336
24	MN	0.586	49	UT	0.329
25	IN	0.578	50	ND	0.253

Table 2. State Court Professionalism, 2004 (using discretionary cases percentage)

Rank	State	Score	Rank	State	Score
1	CA	1.051	26	MD	0.631
2	PA	1.007	27	WI	0.629
3	MI	0.901	28	MN	0.627
4	SC	0.828	29	CT	0.620
5	FL	0.828	30	MO	0.598
6	NY	0.818	31	KY	0.593
7	WV	0.813	32	AR	0.583
8	NJ	0.807	33	AK	0.580
9	IL	0.803	34	KS	0.574
10	LA	0.760	35	OR	0.546
11	VA	0.731	36	RI	0.518
12	WA	0.724	37	IA	0.458
13	DE	0.711	38	AL	0.451
14	OH	0.698	39	OK	0.441
15	NH	0.694	40	MS	0.438
16	TX	0.694	41	ID	0.436
17	TN	0.676	42	ME	0.436
18	CO	0.671	43	NV	0.407
19	AZ	0.669	44	MT	0.401
20	GA	0.660	45	HI	0.394
21	NC	0.654	46	WY	0.347
22	NM	0.650	47	UT	0.320
23	MA	0.648	48	SD	0.304
24	NE	0.641	49	VT	0.297
25	IN	0.638	50	ND	0.267

Table 3. State Courts of Last Resort Most Cited by Other State Courts of Last Resort in Constitutional Decisions, 1970-1994, and 2004 Professionalism Ranks and Scores.

State	Number of Citations	Citation Rank	Professionalism Rank and Score (Docket)	Professionalism Rank and Score (Discretionary)
Pennsylvania	39	1	3 (.876)	2 (1.007)
California	35	2	1 (1.004)	1 (1.051)
New York	33	3	6 (.724)	6 (.818)
Oregon	26	4	32 (.526)	35 (.546)
New Jersey	25	5	8 (.712)	8 (.807)
Michigan	24	6	2 (.878)	3 (.901)
Louisiana	24	6	14 (.667)	10 (.760)
Massachusetts	23	8	26 (.575)	23 (.648)
Illinois	22	9	12 (.690)	9 (.803)
Washington	22	9	17 (.640)	12 (.724)
Alaska	20	11	11 (.690)	33 (.580)

Sources: Citation data are from Cauthen (2003, 793). The professionalization scores are from tables 1 and 2.

Table 4. Comparison of 2004 State Court Professionalism Measures and 2003 State Legislative Professionalism Measure

Professionalism Measure	Minimum Score	Maximum Score	Mean Score	Median Score	Standard Deviation
State Courts (with docket score)	.253	1.004	.578	.577	.152
State Courts (with discretionary cases percentage)	.267	1.051	.615	.634	.178
State Legislatures	.027	.626	.184	.154	.115

Sources: State legislative professionalization score is from Squire (2007). The court professionalization scores are from tables 1 and 2.

Table 5. State Wealth and Professionalism in the Courts and Legislatures

Variable	State Courts Professionalism (Dockets)	State Courts Professionalism (Discretionary Cases)	State Courts Legislatures (Discretionary Cases)
2003 Total State Income (in hundreds of billions)	.040*** (.009)	.048*** (.010)	.040*** (.005)
2003 Per Capita State Income	.0000003 (.000005)	.000002 (.00011)	-.0000001 (.00000024)
Democratic Voting Strength in State	.004 (.003)	.0055 (.003)	.0027 (.001)
South	.030 (.045)	.052 (.049)	-.073** (.024)
Constant	.323* (.152)	.199 (.166)	.004 (.082)
Number of Cases	50	50	50
Adjusted R ²	.39	.47	.69

* p < .05, two-tailed test, ** p < .01, two-tailed test, *** p < .001, two-tailed test.

¹ Annual salaries make calculating judicial pay far more straightforward than measuring state legislative pay, where per diems and expense payments complicate accounting (see Squire 2007).

² These data were gathered during the fall of 2006 by my undergraduate research assistant, Elizabeth Thompson. In a few instances the information was available online, but the data for most states were gathered through phone calls and emails to court administrators. Central legal staff found in some state courts of last resort were left uncouncted, as were “externs” or advanced law students employed by California Supreme Court justices.

³ Useful numbers of cases filed were unavailable for four states: Delaware, Iowa, New Hampshire, and Utah. I estimated a discretionary percentage for each of these states by calculating the mean discretionary cases percentage for the other states that had the same docket control score.

⁴ One of the states coded as having complete control over its docket is New Hampshire. In 2004 the Supreme Court of New Hampshire began implementing a significant change in the way it handles cases, switching to a system of (Gilbertson 2006, 594) “accepting nearly all direct appeals from trial level courts.” The reform will reduce the docket control score in both measures used here and lower the court’s overall professionalism score.

⁵ The United States Supreme Court baseline was set as follows: salary, \$194,300 (the figure for associate justices in 2004); law clerks, 4 (the number allowed for associate justices); docket score, 1; and discretionary cases score, 1.

⁶ The components correlate as follows: salary and number of law clerks, .374 ($p < .008$, two-tailed); salary and docket control score, .259 ($p < .069$, two-tailed); salary and discretionary cases score, .411 ($p < .005$, two-tailed); number of law clerks and docket control score, .194 ($p < .177$, two-tailed); and number of law clerks and discretionary cases score, .339 ($p < .021$, two-tailed). As noted above, the two docket control measures correlate at .744 ($p < .000$, two-tailed).

⁷ Scores have been produced for Oklahoma and Texas although each state has two courts of last resort. In both states salaries and clerk data were collected for the state Supreme Court and not for the Court of Criminal Appeals. The docket control score was determined by examining the Supreme Court's discretionary control over each area other than non-capital criminal cases, in which instance the Court of Criminal Appeals' discretionary powers were ascertained. The discretionary cases percentages were calculated using data from each state's Supreme Court.

⁸ Courts of last resort California and Pennsylvania fall just shy of the United State Supreme Court standard in terms of salary and docket control, but both allow justices to hire more law clerks than their federal counterparts are permitted.

⁹ I thank Paul Brace and Melinda Gann Hall for making their professionalism score for each state available to me.

¹⁰ Courts of last resort in both Alaska and Louisiana have been very active in interpreting their state constitutions, generating decisions to potentially influence their peers. See Bullock (1991) and Motta (1997).

¹¹ The correlation between total state income and per capita state income (.304, $p < .032$, two-tailed) is not high enough to general collinearity concerns.

