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SOCIAL BACKGROUNDS AND DISSENTING BEHAVIOR ON THE NORTH DAKOTA SUPREME COURT 1965-1971

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In June 1972, the United States Supreme Court rendered a decision in the case of Furman v. Georgia,[1] which contained five concurring and four dissenting opinions considering whether capital punishment is cruel and unusual. The question may be asked, how can nine experienced lawyers have such varied interpretations of the Constitution? Regardless of how the question is put, the problem can be conceptualized as follows: The cases represent inputs into the judicial system (or subsystem), out of which the decisions are the output. In the judicial model, the cases are roughly similar yet often substantially different decisions are produced.[2] One possible way to account for the variation in these decisions is to analyze the judges' social and political background.

There have been numerous attempts to predict judicial behavior by correlating social background variables with judicial decisions.[3] Stuart Nagel found the Democratic judges tend to favor: the defendant in criminal cases; the administrative agency in business regulation cases; the claimant in unemployment compensation cases;

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1. 408 U.S. 238 (1972).

2. For example see Alberg Somit, Joseph Tanenhaus, and John Whalke, "Aspects of Judicial Sentencing Behavior," *University of Pittsburg Law Review*, Vol. 21 (June, 1960), pp. 613-619.

3. For just a few examples, see the following: David W. Adamany, "The Party Variable in Judges' Voting: Conceptual Notes and a Case Study," *American Political Science Review*, Vol. 63 (March, 1963, pp. 57-73; Stuart S. Nagel, "Ethnic Affiliations and Judicial Propensities," *Journal of Politics*, Vol. 24 (1962), pp. 92-110; "Political Party Affiliation and Judges' Decisions," *American Political Science Review*, Vol. 55 (1961), pp. 843-853; Sidney S. Ulmer, "Dissenting Behavior and the Social Backgrounds of Supreme Court Justices," *Journal of Politics*, Vol. 32 (1970), pp. 580-598; and Donald R. Matthews, *The Social Backgrounds of Political Decision-Makers* (New York: Random House, 1954); B. Canon and D. Jaros, "Factors Relating to Dissent Rates on Supreme Courts: (paper delivered at the Midwest Political Science Convention, Ann Arbor, Michigan, April 24, 1969; J. B. Grossman, "Social Backgrounds and Judicial Decision-Making." *Harvard Law Review*, Vol. 79 (1966), pp. 1551-1564.

and the employee in employment injury cases.[4] Don R. Bowen found that judges who were: Democrats, non-Protestant, low-status, younger, and long-tenured (as a judge) displayed greater support for criminal defendants than did judges with opposite characteristics.[5] He found similar associations in civil liberty appeals, business-regulatory appeals, labor-management cases, debtor-creditor and landlord-tenant appeals.

In a 1970 article, Sidney Ulmer outlined similar findings between judicial backgrounds and dissenting behavior.[6] This article will limit the discussion of background characteristics as they relate to dissenting behavior on the North Dakota Supreme Court.

If different backgrounds have a tendency to be associated with different decisions in assorted types of cases, then it might follow that a court of judges with similar backgrounds should be a relatively cohesive one. The North Dakota Court provides an available opportunity to test the background influence theory. The backgrounds of the present North Dakota Supreme Court justices are remarkably similar.

All five judges are Republican, Protestant, and members of the American Bar Association. All but Judge Erickstad who is 49 are over 50 years of age, and each has been on the Supreme Court for over five years. Except for Judge Erickstad they received their pre-legal and legal educations in North Dakota. Erickstad attended the University of Minnesota during the final year of undergraduate work and received his law degree from that institution. Each of the present members of the Court was either an individual practitioner or a member in a small law firm. Only one of the justices has had prior judicial experience and only one has not been a public prosecutor. Chief Justice Strutz is the only member of the Court to practice law in a large town (over 10,000 is a large town for the purposes of this study). Finally, each of the judges comes from similar parentage. Their fathers' occupations are as follows: two were farmers, one was a minister, another a restaurant owner, and one was a lawyer.

The present Court was created in 1967 with the election of Judge William Paulson. He replaced William Murray, a Democrat and Roman Catholic, in 1966. During Murray's nine month tenure on the Court, we might expect the Court to be less cohesive or at least we should see an increase in the dissent rate. Judge Murray's demographic data are similar in all respects to the other members

4. Nagel, "Political Party Affiliation," p. 845.
5. Don R. Bowen, "An Explanation of Judicial Voting Behavior from Sociological Characteristics of Judges," Unpublished Ph.D. dissertation, Yale University, 1965, p. 41.
6. Sidney Ulmer, "Dissenting Behavior and the Social Backgrounds of Supreme Court Justices," *Journal of Politics*, Vol. 32, No. 3, August, 1970.

of the Court except for political party and religious affiliation. This has the effect of holding all other background characteristics constant while controlling for religion and political party.

Judge Thomas Burke preceded Judge Murray on the Court. We will examine part of Judge Burke's tenure from 1965 to 1966. Burke's demographic characteristics are entirely different in nearly all respects from any of the other judges. He was a Democrat and a Roman Catholic and was educated in the public schools of Washington, D. C., and to a limited extent in North Dakota. He received his undergraduate degree from Harvard and apprenticed for his law training; had been a member of the Court for 25 years and was 67 years old by 1965. The next most tenured judge had been on the Court for five years—the next oldest was 61.

Finally, Burke came from a more upper class parentage than the other judges. Burke's father was a partner in one of North Dakota's most prestigious law firms and was a former governor of North Dakota. His father served as treasurer of the United States under Woodrow Wilson, had a stock brokerage in New York, and served on the North Dakota Supreme Court for thirteen years. It is expected that Judge Burke would display markedly different voting behavior from Judge Murray who in turn should vote differently than any of the present members of the Court.

In accordance with the above discussion of the influence of background variables and in the light of the apparent cohesiveness of the North Dakota Court, the following hypotheses will be tested.

1. Because of the similarity of the backgrounds of the judges, the present court will have a low rate of dissent.[7]

2. Because of the differences in their backgrounds, Judges Burke and Murray will dissent more frequently than the rest of the judges. Therefore the Court will have a higher rate of dissent during the periods which Burke and Murray were members of the Court.

3. There will be no significant dissenting blocs.

As outlined above, the purpose of this study is to examine the impact of social and political background characteristics upon dissenting behavior. In an attempt to accomplish that, the composition of the North Dakota Supreme Court has been separated into three time periods (the Burke Court, 1965-April, 1966; the Murray Court,

7. Burke, Murray and the present Court are terms used to distinguish between the time periods in which the make up of the Court was different. Judges Teigen, Strutz, Knudson, and Erickstad were on the Court during the entire seven-year period under study. The terms Burke, Murray, and present Court refer to those time periods when Judges Burke, Murray and Paulson, respectively, completed the make up of the court.

May-December, 1966; and the Court, 1967-1971). Judges Teigen, Knudson, Strutz and Erickstad were members of the Court during the entire seven years under study and their backgrounds are similar. The three judges who constitute the fifth member of the Court in three different time periods are Burke, Murray, and Paulson. The composition of the Courts during the first time period (1965 and the first four months of 1966) is as follows: Burke, Teigen, Strutz, Erickstad, and Knudson. Because Judge Burke's background differs radically from the other four members of the Court this time period will be referred to throughout this study as the Burke Court.

Judge Burke died in April of 1966 and William Murray was appointed to take his place. Judge Murray's background differs significantly from his colleagues in party identification and religious affiliation. For identification purposes, the second time period (May through December, 1966) will be referred to as the Murray Court and consists of Judges Murray, Teigen, Strutz, Erickstad, and Knudson.

Judge Murray was replaced in January of 1967 by William Paulson who defeated him in the general election. Paulson's demographic characteristics are similar to those of Teigen, Strutz, Erickstad, and Knudson. The above five judges constitute the membership of the Court during the third time period (1967 - 1971). This time period will be referred to as the present Court. The table on the next page displays the differences in the social and political backgrounds of the judges.

During the seven year period under study, the North Dakota Supreme Courrt resolved 566 cases[8] (an average of 80.9 cases per year). According to the literature, there are certain types of cases which are more susceptible to analysis (in terms of attitudinal behavior) than others.[9] The following are the types of cases used in this study:

criminal cases, personal injury cases, tax cases, government regulation cases, debtor-creditor cases, landlord-tenant cases, and insured versus insuror cases.

The findings for the first hypothesis (that the North Dakota Supreme Court will have a low rate of dissent) are as follows: The total number of dissents range from a low of eight in 1965 and 1966 to a high of 14 in 1968, 1970, and 1971. Taking into consideration all seven years, the Court averages 10.9 dissents per year.

8. This is the total of actual written opinions. It does not include rehearings and various other cases which come before the Court but do not require written opinions for disposal.

9. For example see, Nagel, "Political Party Affiliation," pp. 844-845; and Jerry K. Beatty, "Decision-Making on the Iowa Supreme Court—1965-1969," *Drake Law Review*, May 1970, pp. 350-351.

TABLE I

BACKGROUND CHARACTERISTICS OF NORTH DAKOTA SUPREME COURT JUSTICES 1965-1971

	Burke	Teigen	Strutz	Erickstad	Knudson	Murray	Paulson
Political Party	Dem.	Rep.	Rep.	Rep.	Rep.	Dem.	Rep.
Religion	Cath.	Prot.	Prot.	Prot.	Prot.	Cath.	Prot.
Pre-legal Education	Harvard	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
Legal Education	Apprenticeship	N.D.	N.D.	Minn.	N.D.	N.D.	N.D.
Age in 1971	69	62	67	48	67	49	59
Tenure on N.D. Supreme Court	27	11	11	8	6	9 months	5
Prior Judicial Experience	No	Yes	No	No	No	No	No
Prosecuting Experience	Yes	Yes	Yes	Yes	No	Yes	Yes
Membership in ABA	No	Yes	Yes	Yes	Yes	Yes	Yes
Type of Law Practice	Firm	Individual Practice	Firm	Firm	Individual Practice	Firm	Individual Practice
Initial Means of Accession to Court	Elected	Appointed	Appointed	Elected	Elected	Appointed	Elected
Father's Occupation	Politician and Judge	Farmer	Minister	Farmer	Restaurant Owner	Lawyer	Lawyer
Estimated Worth from Martindale-Hubble	$5,000 (1937)	Unknown	30,000-50,000 (1957)	30,000-50,000 (1961)	20,000-30,000 (1966)	50,000-100,000 (1966)	50,000-100,000 (1966)
Size of Town Practiced in	Urban	Rural	Urban	Rural	Rural	Urban	Rural

The rate of dissent ranged from a low of 5.94 in 1966 to a high of 15.39 in 1968.[10] The average rate of dissent for the seven year period is 9.22. To determine whether that is a high or low rate of dissent, there should be some figures for comparison. A ten year study of the South Dakota Supreme Court indicates an average dissent rate of 16.7 with a range from 8.7 in 1958 to 28.0 in 1965.[11] The ten year period of the South Dakota study was from

10. Rate of dissent is computed by dividing the yearly number of dissents by the total yearly opinions written. Conventionally this is done by using the total number of dissenting votes rather than the number of dissents. However, for comparative purposes the total dissents are used here.

11. Kenneth A. Wagner, "Decisional Predilections and Leadership Patterns on a State

1957 to 1967. For the last three years of that period a trend of higher dissent rates is visible (28.0, 24.2 and 27.5). A similar pattern is apparent on the Iowa Supreme Court.[12] In the Iowa study Jerry Beatty found that the dissent rate from 1960 to 1964 averaged 9.7 while by 1969 the rate of dissent had climbed to 26.1. In only one year (1968) did the North Dakota Court have a dissent rate above 10%. Table II compares the dissent rates for the North Dakota Court over the seven year period.

TABLE II

CASES AND DISSENTS 1965 - 1971
OF THE NORTH DAKOTA SUPREME COURT

	1965	1966	1967	1968	1969	1970	1971	Total	Average
Number of Written Opinions	78	101	97	65	62	80	83	566	80.9
Number of Dissents	6	6	6	10	6	8	8	50	7.14
Ratio	7.69	5.94	6.19	15.39	9.68	10.0	9.64	64.53	9.22

The South Dakota Supreme Court wrote 568 opinions from 1957 through 1967. There was a total of 95 dissents resulting in 133 dissenting votes. By comparison, between 1965 and 1971 the North Dakota Court produced 566 written opinions (only two less than the South Dakota Court for a shorter period of time). The North Dakota Court, however, rendered only 76 dissenting votes from 50 dissents.

The United States Supreme Court has a dissent rate of about 50 per cent.[13] The Iowa Court presently dissents at a rate of about 25 per cent,[14] and the South Dakota Court maintains an average dissent rate of 16.7. Considering that the North Dakota Court dissents at an average rate of 9.22 per cent, it does not seem unrealistic to maintain that the North Dakota Court has a low rate of dissent.

It was predicted that Judges Burke and Murray would dissent more frequently than the other judges. The data indicates that that prediction is not substantiated. Table III demonstrates that Justices Teigen, Knudson, and Strutz dissent most frequently while Burke and Murray registered the fewest dissents during the period under study. Table IV indicates that the Burke and Murray courts do not display a higher rate of dissent than the present court.

Supreme Court: An Exploration—The Case of South Dakota 1957-1967" (unpublished paper for seminar in Judicial Process, University of Iowa, 1968), p. 18.

12. Beatty, "Iowa Supreme Court", pp. 342-367.
13. Wagner, "South Dakota Supreme Court", p. 16.
14. Beatty, "Iowa Supreme Court", p. 343.

TABLE III
JUDGES AND DISSENTING VOTES

	Total Number of Cases Partici-pated in	Total Number of Dissenting Votes	Ratio of Participa-tion to Dissenting Votes	Single Dissents	Ratio of Single Dissents to Total Dissenting Votes
Burke	68	2	2.94	0	0
Teigen	563	32	5.68	13	40.63
Strutz	544	12	2.21	5	41.67
Erickstad	545	6	1.10	2	33.33
Knudson	515	17	3.30	4	23.53
Murray	54	0	0.00	0	0
Paulson	357	6	1.68	0	0
Totals	2,646	75[a]		24	

TABLE IV
CASES AND DISSENTS FOR THE THREE COURTS

	Burke Court (1965)	Murray Court (1966)	Present Court (1967-71)	Total
Number of Written Opinions	87	92	387	566
Number of Dissents	8	4	38	50
Ratio	9.20%	4.35%	9.82%	11.3%

Average Rate of Dissent=7.79.

Perhaps the small number of participations accounts for the few dissents from Judges Burke and Murray. During the year and three months in which Judge Burke is included in this study, he was ill with cancer and consequently only took part in 68 of a possible 87 opinions. Judge Murray was on the Court for a period of only nine months (April through December which includes the summer months during which the Court is in recess). On the South Dakota Court, however, Judge Rudolph only participated in 32 cases and still managed to register two dissents.

It was also predicted that there would be no significant dissenting blocs, but the evidence from Table V indicates that there are two dissenting blocs on the present court.

According to Schubert, an index of cohesion of .40 to .49 indicates the existence of a moderate bloc,[15] while anything above .50 represents a strong bloc. The evidence, from the above bloc analysis, indicates a strong dissenting bloc between Judges Teigen

a. The total number of dissenting votes is actually 76. One dissenting vote was cast by a substituting District Court Judge.

15. Glendon A. Schubert, "Quantitative Analysis of Judicial Behavior." (Glencoe, Ill.; the Free Press, 1959).

TABLE V
BLOC ANALYSIS OF UNDERDOG CASES 1967 - 1971

	Erickstad	Paulson	Strutz	Knudson	Teigen	Total Dissents
Erickstad	0	1	0	0	0	1
Paulson	1	0	0	1	0	2
Strutz	0	0	2	0	5	7
Knudson	0	1	0	4	8	13
Teigen	0	0	5	8	5	18*

Outer bloc: I. Ch.=.35 (weak)
Inner bloc: I. Ch.=.46 (moderate)
Teigen-Strutz: I. Ch.=.83 (strong)

and Strutz and a moderate bloc between Knudson and Teigen.

So far, the data indicates that the North Dakota Court is cohesive as evidenced by the low dissent rate. It has been demonstrated that the two judges who were expected to dissent most frequently did not do so. Further there is evidence of two dissenting blocs on the Court where none were expected.

The fact that over 90 per cent of its decisons are unanimous attests to the cohesiveness of the North Dakota Supreme Court. It is questionable, however, that social and political background variables alone account for the Court's cohesion. During the seven years under study the dissent rate has always been low regardless of the composition of the Court. The different backgrounds of Judges Burke and Murray did not significantly affect interagreement on the Court.

One possible explanation for the cohesiveness of the Court may be found in the state's legal culture, (specifically the type of cases which most often come before the Court). Legal culture is that phenomena which makes the practice of law and the judicial system somewhat different from state to state. The classic example is the difference between Louisiana (Civil Law) and the rest of the states (Common Law). However, there are more subtle differences from state to state. Some of the factors which account for these differences in legal culture are: the type of litigation most frequently occurring (which could be a function of the economy of a state), the structure of the court system, the influence of various bar associations, and judicial selection and tenure.

Most cases appealed to the North Dakota Court do not involve those questions of law which tend to expose differences in judicial philosophy. Rarely is the Court asked to determine the constitutionality of a state law or to determine legislative intent. When criminal

*Dissenting votes in the bloc analysis do not equal 75 because only the following types of cases were analyzed: Criminal, personal injury, government regulation, insured v. insuror, debtor-creditor, and landlord-tenant.

cases involving constitutional issues were isolated, they contained nine out of the total eleven dissents in criminal cases. In 1970 the Court decided four cases involving the free exercise or establishment clauses of the first amendment. In two of those cases, there were four dissents.[16] In another case the majority opinion was signed by only two of the five judges.[17] The other three judges wrote separate concurring opinions. A similar pattern is apparent in reapportionment cases.[18]

It is evident then, that there are differences in judicial philosophy on the Court. But it is also evident that those differences do not usually surface except in cases involving controversial issues.

If North Dakota's legal culture helps to explain the low dissent rate, perhaps the next question is what accounts for North Dakota's legal culture. Why is it that the North Dakota Supreme Court has an opportunity to decide so few cases involving controversial social or political issues. The answer to that might be found in the state's political culture. Similar to the concept of legal culture, political culture refers to that phenomenon which makes politics in North Dakota different from politics in, for example, New York.

The state is a sparsely populated and rural oriented one. There are no major metropolitan areas and the state is not highly industrialized. The ethnic composition of the state appears to be homogeneous and therefore there is a lack of competition between the political parties (North Dakota has a modified one-party political system).[19] In such a culture, one would expect a lack of political challenge (in all branches of government) and therefore a lack of political change. Two examples of a lack of political challenge in this state are long tenure for public officials and a one-party dominated legislature. There is a history of long tenure for public office holders in the state. Governor Guy, both U. S. Senators, and Representative Andrews are good examples. Since at least 1964 both houses of the state legislature have been over 70 per cent Republican.[20]

The political culture argument is reinforced by Jacob and Vines who suggest that certain aspects of political culture have a high positive correlation to legal professionalism.[21] The authors developed an index of legal professionalism for the states, part of which

16. City of Bismarck v. St. Mary's Church, 181 N.W.2d 713 (N.D. 1970) and City of Bismarck v. Materi, 177 N.W.2d 530 (N.D. 1970).
17. Lutheran Campus Council v. Board of County Commissioners, 174 N.W.2d 362 (N.D. 1970).
18. State v. Cass County, 158 N.W.2d 687 (N.D. 1968) and Stearns v. Twin Butte Public School District No. 1, 185 N.W.2d 641 (N.D. 1971).
19. Austin Ranney, "Parties in State Politics," in *Politics in the American States*, ed. by Herbert Jacob and Kenneth Vines (2nd ed.: Boston: Little, Brown and Co., 1971), p. 87.
20. *Ibid.*, p. 167.
21. Jacob and Vines, "State Courts," *ibid.*, pp. 291-292.

consisted of several aspects of the judicial system. Some of these aspects of the judicial system which led to a high rating on the legal professionalism index were as follows: high salaries and long tenure for judges; judicial selection based on the Missouri plan or some variation of it; more than five judges on the Supreme Court; a well financed and well staffed judicial system; a court system which avoided unnecessary duplication and joint jurisdiction; and an intermediate appellate court. Jacob and Vines maintain that a high degree of legal professionalism correlates positively to a high dissent rate. The state ranked 25 in legal professionalism.[22] The authors summarize the relationship between political culture and legal professionalism as follows:

> In general, states that ranked highest appear to be urban and industrial. . . . Legal groups have been most successful in bringing modern legal orientations into judiciaries in wealthier, urban states with social and economic heterogeneity. Greater legal professionalism is also present in those states with more partisan competition and political innovation. In addition, we find that legal and legislative professionalism tend to occur together in the states and represent aspects of modernization and political development. Quite likely modernization is correlated with the growth of an urban industrial society and the development of professional orientations toward political institutions.[23]

The authors found several positive correlations for dissent rates with political and legal cultural variables. They found high dissent rates on courts with more than five judges and also in those states which have intermediate appellate courts.[24] Both of the above factors are found in complex political cultures. As stated above, they found various cultural factors were related to legal professionalism and, in turn, legal professionalism correlates positively with dissent rates.

> For example, the five states with highest dissent rates in 1966 also have high legal professionalism scores. This relationship suggests that the propensity to state dissents is an outgrowth of modernization of state courts. As the states develop modern and socially complex societies, their court systems, as we have shown, become more legally professionalized. Judges on such courts become more aware of social conflict and less insulated by traditional legal orientations. When traditional legal methods fail to resolve conflicts on the courts, state judges express disagreement more frequently by dissenting votes.[25]

22. *Ibid.*, p. 292.
23. *Ibid.*, pp. 292-293.
24. *Ibid.*, p. 302.
25. *Ibid.*, p. 303.

While the Court is a cohesive one with relatively few dissents, there is a pattern to dissenting behavior. There is a strong dissenting bloc consisting of Judges Teigen and Strutz. The findings of the bloc analysis were reinforced by the results of personal interviews with four of the justices of the Court.[26] During those interviews the members of the Court expressed an awareness of differences in judicial philosophy on the Court. It was indicated that a liberal bloc consisted of Judges Paulson, Erickstad, and Knudson. Disagreement over the proper judicial role is apparently the cause of the split on the Court. All four judges interviewed indicated that the legislature, not the court, was the proper institution for initiation of change. Apparently, however, Judges Teigen and Strutz are more adamant on that point than their colleagues. In the case of *Kunze v. Stang*, Judges Paulson, Erickstad and Knudson took it upon themselves to rewrite the guest statute for the state legislature.[27] The justices of the Supreme Court were asked to cite several cases which they felt were representative of their judicial philosophy. Four cases were chosen from that list which appeared to be representative of the philosophical differences on the Court.[28] In each case either Judge Teigen or Judge Strutz, or both, have dissented. Their dissenting opinions object to the Court's intrusion into an area in which they feel the Court should not be involved.

In conclusion, it would appear that background characteristics are a poor predictor of dissenting behavior for the North Dakota Supreme Court. It was hypothesized that the Court would be a cohesive one and this was supported by evidence of a low dissent rate. However, the rate of dissent did not increase with the introduction of varied backgrounds. Therefore, it would seem that the low dissent rate on the North Dakota Court is a function of the state's legal culture rather than the background characteristics of the judges.

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26. Chief Justice Strutz had just ggotten over an illness and unfortunately could not be present for an interview.

27. Kunze v. Stang, 191 N.W.2d 526 (N.D. 1971).

A guest driver and the owner of a car occupied the front seat and two guest passengers were in the back seat. The car took a curve at 80 miles per hour and one of the guest passengers in the back seat requested the driver to slow down. The car's owner (sitting in the front seat next to the driver) indicated that his car was capable of handling at speeds up to 90 miles per hour. The car did not slow down and shortly thereafter the car crashed killing both the driver and the owner.

The guest passengers sued the owner's estate for personal injuries received as a result of the accident.

According to state statute and previous state court opinions, the driver's estate was liable, but not the owner's estate.

In this case the Supreme Court said that since the owner had displayed negligence and had an opportunity to control his car, he was liable.

Chief Justice Strutz dissenting with Judge Teigen said, "The majority have, by their opinion, repealed the guest statute, which the legislative assembly has repeatedly refused to do."

28. Kunze v. Stang, 191 N.W.2d 526 (N.D. 1971), Simon v. Woodland, 179 N.W.2d 422 (N.D. 1970), Fournier v. Roed, 161 N.W.2d 458 (N.D. 1968), and Geo. E. Haggart, Inc. v. North Dakota Workman's Compensation Bureau, 171 N.W.2d 104 (N.D. 1969).

There is also evidence of dissenting blocs on the Court. This was unexpected because of the similarity in judges backgrounds. The evidence indicates that what differences there are on the Court are indicative of differences in judicial philosophy or role rather than background characteristics. Further research is needed to account for the differences in judicial philosophy evidenced on the North Dakota Court, since the above findings indicate that demographic characteristics do not appear to be involved.